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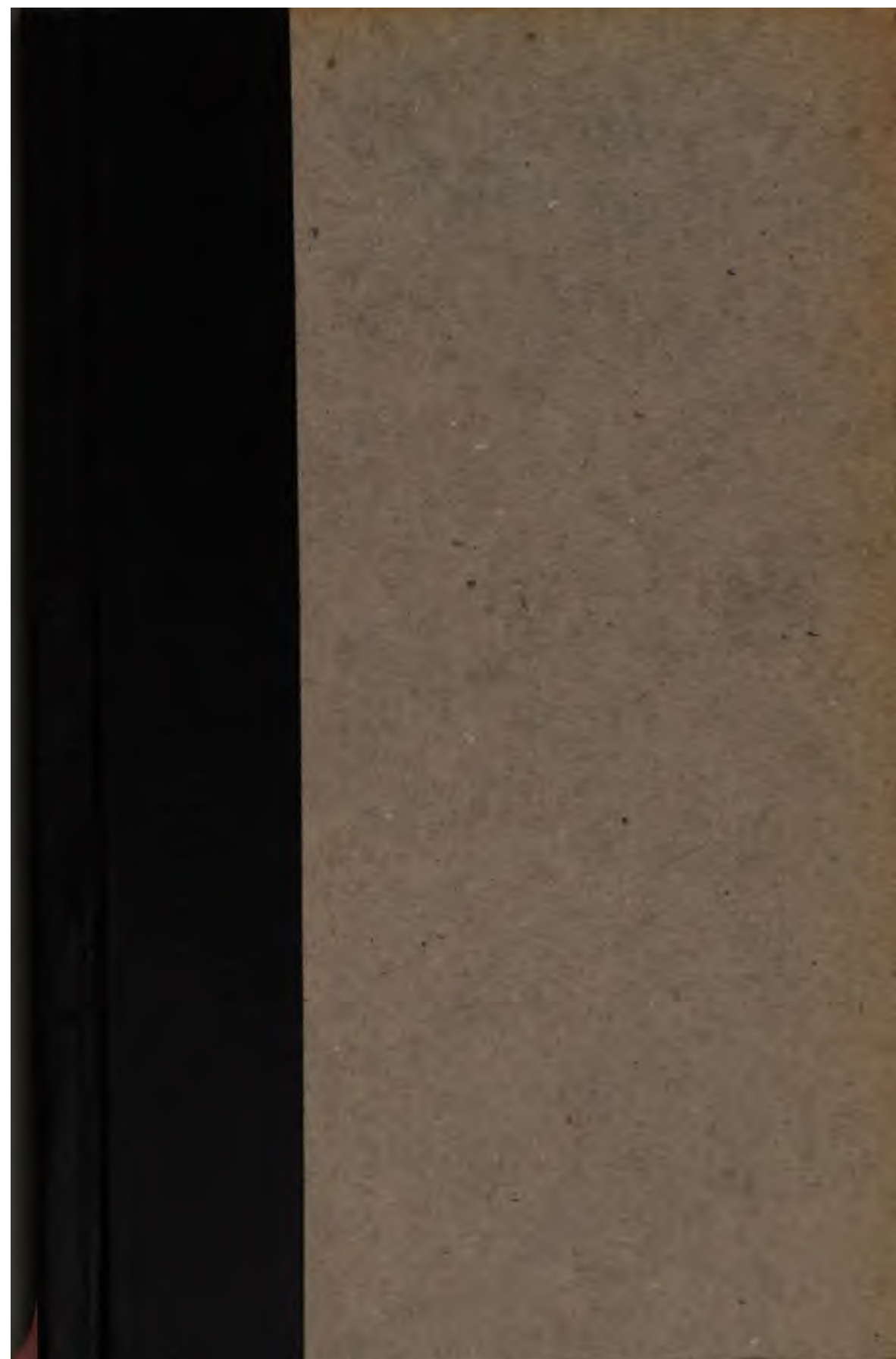
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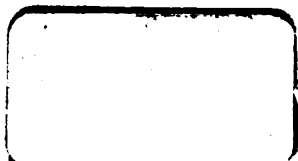
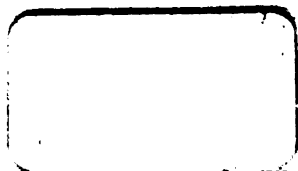
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✓ INVESTIGATION
OF THE
DEPARTMENT OF THE INTERIOR
AND OF THE
BUREAU OF FORESTRY

HEARINGS HELD BEFORE
THE JOINT COMMITTEE OF CONGRESS

RELATIVE TO THE

INVESTIGATION OF THE DEPARTMENT OF THE
INTERIOR AND ITS SEVERAL BUREAUS, OFFI-
CERS, AND EMPLOYEES, AND OF THE BUREAU
OF FORESTRY, IN THE DEPARTMENT OF AGRI-
CULTURE, AND ITS OFFICERS AND EMPLOYEES

VOLUME IV

WASHINGTON
GOVERNMENT PRINTING OFFICE

1910

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OLLIE M. JAMES, Kentucky.

JAMES M. GRAHAM, Illinois.

PAUL SLEMAN, Secretary.

NO. 25

**HEARINGS BEFORE THE COMMITTEE TO INVESTIGATE THE
INTERIOR DEPARTMENT AND FORESTRY SERVICE**

APRIL 1, 1910

**ROOM 207, SENATE OFFICE BUILDING
WASHINGTON, D. C.**

FRIDAY, APRIL 1, 1910.

JOINT COMMITTEE TO INVESTIGATE THE
INTERIOR DEPARTMENT AND FORESTRY SERVICE,
Washington, D. C., April 1, 1910.

The Joint Committee to Investigate the Interior Department and Forestry Service met pursuant to adjournment at 10 a. m.

There were present as counsel: Mr. Louis D. Brandeis, representing Mr. Louis R. Glavis; Mr. George Wharton Pepper and Mr. Nathan A. Smyth, representing Mr. Gifford Pinchot; Mr. John J. Vertrees and Carl Rasch, representing Secretary Ballinger.

The CHAIRMAN. The committee will please come to order. A quorum is present. Mr. Vertrees, are you ready to proceed?

Mr. VERTREES. Yes, sir.

TESTIMONY OF ELMER E. TODD.

Elmer E. Todd, having been first duly sworn by the chairman, testified as follows:

Mr. VERTREES. This, I believe, is Mr. Elmer E. Todd?

Mr. TODD. Yes, sir.

Mr. VERTREES. Where do you live, Mr. Todd?

Mr. TODD. In Seattle.

Mr. VERTREES. Do you hold any official position?

Mr. TODD. I am United States attorney for the western district of Washington.

Mr. VERTREES. How long have you been such attorney?

Mr. TODD. Since November 1, 1907.

Mr. VERTREES. Who was your predecessor?

Mr. TODD. P. C. Sullivan.

Mr. VERTREES. Who was assistant to Mr. Sullivan?

Mr. TODD. The first assistant was Henry M. Hoyt.

Mr. VERTREES. Did he continue to be your assistant after you became district attorney?

Mr. TODD. He continued as assistant until the latter part of December, 1907, when he was appointed attorney-general for Porto Rico.

Mr. VERTREES. What knowledge have you of the case that has been referred to here by the general designation of the Watson-Allen case?

Mr. TODD. I argued the case orally in the circuit court and prepared the brief upon which the case was decided, and, like all other cases in the office, I was responsible for the conduct of the case after November 1, 1907.

Mr. VERTREES. Did Mr. Hoyt argue the case?

Mr. TODD. No, sir.

Mr. VERTREES. Did he prepare it?

Mr. TODD. He introduced the complainants' testimony in chief and was present at the introduction of the larger part of the defendant's testimony.

Mr. VERTREES. Who concluded the preparation of that case?

Mr. TODD. Mr. Frederick G. Dorety, an assistant in my office completed the taking, or was present at the completion, of the defendant's testimony and introduced the testimony of the complainants in re-

buttal, and he then resigned, and I myself prepared the case for argument, argued the case, and submitted the brief.

Mr. VERTREES. Are you familiar with the record of the case as well as the facts of that record?

Mr. TODD. I am.

Mr. VERTREES. Have you ever examined it with special reference to determining whether or not the name of Mr. Ballinger or of Mr. Ballinger's firm has been erased from any portion of that record?

Mr. TODD. I have made that examination.

Mr. VERTREES. Mr. Chairman, I wish to say that the original record was brought here by direction of the committee and is in the custody of the Attorney-General's office, and they have an agent or representative here with the record. I desire in this connection, while this witness is on the stand, to present that original record for the personal examination of the committee. It is understood, however, or has been, as I understand it, that the record should not be filed but should be returned. A copy is already on file.

The CHAIRMAN. Very well, that course will be taken.

Mr. VERTREES. Are you able to state how many times the name of Mr. Ballinger or the name of his firm appears in that record?

Mr. TODD. I could not say further than it appears a great many times.

Mr. VERTREES. But you do say that at no place anywhere has there been any effort to erase that name or either of these names from the record. Does the original record show anything of that kind?

Mr. TODD. From my information on the subject I will state positively that no change was ever made in the testimony in the record on that point.

Mr. VERTREES. This, Mr. Chairman, is the record, and is introduced to the end that it can be seen for itself that such is the case, if the committee desires to examine it.

The CHAIRMAN. Very well. I suppose, Mr. Vertrees, you desire us to examine that record and then have it returned, as it is an original record.

Mr. VERTREES. I was thinking in view of Mr. Todd's statement perhaps it would not really be necessary, but the record is, of course, the best evidence, and for that reason I present it.

The CHAIRMAN. I would suggest that you have Mr. Brandeis examine it, and you might agree about these things, and that would avoid the necessity of the committee going over it.

Mr. VERTREES. I am sure there will be no trouble about that.

Mr. BRANDEIS. That is entirely satisfactory.

The CHAIRMAN. Very well.

Mr. VERTREES. Mr. Chairman, I am requested to call the attention of the committee to this part of the order of the court transmitting the record: "That they are transmitted on the express condition that no part thereof shall leave the custody of the representative of the Department of Justice prior to their return to the clerk of this court, and that all thereof be returned to the said clerk as soon as possible, consistent with their submission to the joint committee of Congress to investigate the Interior Department and Forestry Service." So the order means they shall not leave the custody of the representative of the department, and therefore I suggest that such examination as is desired to be made be made by Mr. Brandeis to-day or shortly.

The CHAIRMAN. I suppose you could do it during the noon recess.

Mr. BRANDEIS. I hope so; yes, sir.

Mr. VERTREES. Mr. Todd, you have stated that you are familiar with the contents of that record. I ask you, as a matter of fact, whether there was evidence in the case, or in the record, tending to show that Mr. Ballinger had at any time drawn an agreement, called an escrow agreement, for those parties?

Mr. TODD. The record shows nothing of the kind. On the contrary, the record shows that those parties went to Mr. Ballinger's office and had deeds and notes drawn, and that they then put those deeds and notes in Mr. Ballinger's safe, without any written agreement, merely an oral understanding that they should remain in the safe until the parties called for them.

Mr. VERTREES. Do you recollect who it was that placed them in the safe?

Mr. TODD. The record does not show, but I know from extraneous evidence.

Mr. VERTREES. You say you do know?

Mr. TODD. That is, I know from what persons have told me. The record does not show who placed them in the safe.

Mr. VERTREES. Who was it?

Mr. TODD. It was a clerk in Mr. Ballinger's office, one Mr. Brightman.

Mr. VERTREES. Mr. Todd, you know Mr. H. Tillard Jones, special agent of the service, do you?

Mr. TODD. Yes; I know Mr. Jones.

Mr. VERTREES. He has been a witness in this case and testified.

Mr. TODD. He has, so I understand.

Mr. VERTREES. A part of his evidence appears on page 958 of the record, and that I wish to read to you. In answer to a question as to what he, Jones, did, Mr. Jones replied as follows, before the committee:

Mr. JONES. We went to Juneau, Alaska, for the original records in the coal cases of Christopher and Simmons, wherein it appeared that perjury had been committed, and also a conspiracy under section 5440 of the Revised Statutes; that you could make a case of conspiracy against the parties to defraud the Government of its public lands. And I had a conference with Mr. Todd, and he told me it was useless to bring the matter up before the court, because Judge Hanford was constitutionally opposed to land-fraud trials generally and he would not take action on the case, and that he, Todd, did not want to be humiliated by taking the case up with Judge Hanford, and he advised me to submit the matter to the Commissioner of the General Land Office and have him confer with the Attorney-General of the United States and get the Attorney-General to direct him, Todd, to bring proceedings against these parties. I also did the same thing with respect to a group of claims around where the parties lived at Spokane, Wash., with the United States attorney there, and he said it would be very difficult.

I call your attention especially to that part which says you told him that Judge Hanford was constitutionally opposed to land-fraud trials generally, and would not take action on the case, and that you did not want to be humiliated by taking the case up with Judge Hanford. I ask you whether any such conversation as that ever took place?

Mr. TODD. I will have to state it at some length. Mr. Jones did have a conference with me, but his testimony that I said Judge Hanford was constitutionally opposed to land-fraud cases and that I would not humiliate myself by presenting it to him in the western district of Washington is absolutely false. Mr. Jones first submitted to me—

Mr. VERTREES. If you will wait one moment, Mr. Todd. My question was as to that particular part of the testimony.

Mr. TODD. That testimony is absolutely false. I never made such a statement to Mr. Jones, and Judge Hanford is not constitutionally opposed to land-fraud cases. On the contrary, the Portland Coal and Coke Company case, which has been urged here, was one decided by Judge Hanford, and in the same Wilson Coal Company case upon the demurrer he made exactly, to all intents and purposes, the same ruling as the judge made on final hearing, and no land-fraud case of Judge Hanford has ever been reversed by a higher court.

Mr. VERTREES. This is true, is it not, that Judge Hanford did make a speech at Seattle some time last fall in which he opposed conservation as administered and insisted upon by Mr. Pinchot?

Mr. TODD. Judge Hanford last September, at the fair in Seattle, made a speech, a public speech, in which he criticised what he called "theoretical conservation."

Mr. VERTREES. Now, Mr. Todd, referring to the conversation with Mr. Jones, I understand you to say that you did have one with respect to the prosecution of certain cases; that is correct, is it not?

Mr. TODD. That is correct.

Mr. VERTREES. However, they were not Cunningham claimants, were they?

Mr. TODD. They were not the Cunningham group, or any other group other than what is known as the Christopher group.

Mr. VERTREES. Now state to this committee exactly what did take place between you and Mr. Jones with respect to those prosecutions.

Mr. TODD. On April 21—I think it was—Mr. Glavis was brought to my office and Mr. Jones introduced him to me. That was April 21, 1908, and I think Mr. Glavis stated that Mr. Jones had some matters which he wanted to present to me relative to criminal prosecution for violation of the United States statutes relative to coal lands in Alaska. I asked Mr. Jones to submit any papers he had in the matter, together with a letter. On April 22 he submitted to me affidavits relative to the Christopher group, accompanied by a letter which I have here, and this letter states as follows. Do you wish to see the letter?

Mr. BRANDEIS. No; I will be glad to have you read it, the whole of it.

Mr. VERTREES. Do you wish the whole of it read?

Mr. BRANDEIS. Yes, sir.

Mr. TODD. The letter is a copy. The original is in my office and can be introduced. It is a long summary of different affidavits.

Mr. BRANDEIS. Just read the beginning and indicate what the affidavits are.

(The letter is as follows:)

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Seattle, Wash., April 22, 1908.

HON. ELMER E. TODD,
United States Attorney, Seattle, Wash.

DEAR SIR: I hand you herewith certain affidavits referring to the alleged fraudulent location of coal lands in Alaska by Cornelius Christopher, Mortimer C. Sweeny, and, possibly, George C. Simmons.

For your convenience I have set out herein the name of the affiant, the substance of his affidavit, and the party involved in the contemplated criminal action.

INVESTIGATION INTERIOR DEPT. AND BUREAU OF FORESTRY. 2415

Affiant.	Substance.	Party involved.
C. Christopher.....	That he procured the location of 33 coal claims in Alaska. That he has power of attorney to dispose of the claims. That the parties are not able to pay for the claims, and he is advancing the money for the lands.	C. Christopher.
J. P. Hartman.....	That he gave C. Christopher a power of attorney to locate a mineral claim for affiant in Alaska. That Christopher located a coal claim instead of a claim for some metal, as was contemplated by affiant when he gave the power of attorney. That affiant did not have a coal right and has requested Christopher to remove said filing from the record.	Do.
G. Simmonds.....	That Christopher has had charge of all work in connection with development of claims located by Simmonds.	Do.
A. Seagrove.....	That he and his daughter, Mabel, gave Christopher power of attorney to file coal claim. That he has put no money into the claim and only expects to get a "compensation" from Christopher for the use of his right.	Do.
M. C. Sweeny.....	That he obtained powers of attorney from certain individuals to locate coal claims in Alaska. That George Simmonds had formerly had powers to locate and represent these parties, but the same were revoked because of his connection with Christopher. That the parties located were financially unable to make payments for the lands. That he bought one claim for himself and has negotiated the sale of other claims for other parties.	C. Christopher and G. Simmonds.
M. D. Leehy.....	That he advised Sweeny that it was all right to sell these claims.	M. D. Leehy.
G. O. Guy.....	That he gave Sweeny power of attorney to locate coal claim. That he has expended no money on the claim and does not know anything about it. Trusts the matter entirely to Sweeny.	M. C. Sweeny.
P. J. Reardon.....	That he signed paper, represented to him by Sweeny as release of power of attorney. That if this paper is a relinquishment for coal claim he did not know it, as he did not know that he had a coal claim in Alaska. That he had formerly given Sweeny a power of attorney to locate a claim, and that Sweeny told him later that he had not located a claim for him.	Do.
O. Gates.....	That he gave Sweeny power of attorney to locate coal claim. That he did not pay any money in regard to the claim, but did it to help Sweeny, who was a friend of his.	Do.
J. Tearney.....	That he gave Sweeny a power of attorney to locate a coal claim in Alaska. That he subsequently executed a paper in regard to this claim in the office of one George Simmonds. That he has put no money in the matter.	Do.
F. D. Kimball.....	That he gave Sweeny power of attorney to locate coal claim in Alaska. That he has not paid any money for this claim and that he had the expectation, with others, of bunching the claims and get patent and then do what they thought best with the claims.	Do.
L. D. Schoonover...	Gave power of attorney to Sweeny to locate coal claim in Alaska. Has paid no money on this claim. Executed some paper about a year ago in regard to this claim, but does not know what it was.	Do.
W. J. Landon.....	That he gave Sweeny a power of attorney to locate a coal claim in Alaska and do with it what he thought proper. That he put no money in it and expects to get none out of it. He gave power of attorney out of friendship.	Do.
J. W. Dunlap.....	That he gave power of attorney to Sweeny to locate coal claim for the use and benefit of said Sweeny. That he, Dunlap, does not expect to get any benefit from the claim.	Do.
L. W. Penney.....	That he gave power of attorney to Sweeny to locate a coal claim for his, Sweeny's, own use and benefit. That he, Penney, does not expect to get any benefit from the same.	Do.
G. Hartig.....	That some man got him to give power of attorney to take a coal claim in Alaska. That subsequently this man came to him and got him to execute what purported to be a relinquishment. This party said if he sold the claim he would give something to locator and would make it all right with him. William Devere corroborates this statement.	G. Simmonds(?) and M. C. Sweeny(?).
H. F. Gibson.....	That he gave Sweeny power of attorney to locate coal claim for him. That Sweeny had full control of the matter.	M. C. Sweeny.
J. Deaver.....	That he gave Sweeny power of attorney to locate coal claim for Sweeny's own benefit. That about two months ago Sweeny brought some other paper for him to sign and he signed same. That he never paid anything in relation to this claim and never expected to get anything out of it.	Do.
B. S. Brown.....	That he gave Sweeny power of attorney to locate coal claim. That Sweeny was to have the claim when it was located. That he, Brown, has signed certain papers since in connection with the claim, but as he did not expect to get anything out of the transaction he did not pay much attention to it.	Do.
G. Simmonds.....	That he got power of attorney from numerous persons to file coal claims in Alaska. That C. Christopher has done all of the development of these claims and had put up all the money for the same.	C. Christopher and G. Simmonds.

That at the inception of this scheme to get title to Alaska coal lands Cornelius Christopher was in Alaska and discovered that there were 33 coal claims, the titles to which did not appear to be straight, that were available for location. He got Mortimer C. Sweeny to procure powers of attorney from 23 different persons in the name of George Simmons, and filed locations for the 23 persons so procured. It appears that Sweeny and Christopher had a disagreement about these lands, and Sweeny then went to work to have the powers of attorney to Simmons revoked and put in his own name. The power of attorney given to Sweeny gave him full power to dispose of the claim as he saw fit. (See copy of power of attorney attached hereto as Exhibit A.)

A number of the persons who have given such powers of attorney to Sweeny have been sold out and do not know it. One of these persons is C. D. McKenzie, whose affidavit is hereto attached as Exhibit B. Others who were sold out were H. F. Gibson, James Deaver, L. W. Penney, and negotiations are pending for the sale of other claims, as will appear from the affidavit of M. C. Sweeny, heretofore mentioned; that in July, 1906, G. O. Guy and P. J. Reardon gave Sweeny relinquishments for their claims; that these relinquishments have not been recorded in the local land office at Juneau, and the parties giving same did not realize what they were doing in the matter.

The only matter that would appear to connect all of the parties in this alleged conspiracy is that Christopher, in the first instance, got Sweeny to procure powers of attorney in the name of George Simmonds to locate these coal lands; that afterwards the locators became dissatisfied with Simmons, and Sweeny then procured revocations of the said powers of attorney and new powers in his own name. It also appears that Christopher was putting up what money was necessary in these locations.

While it is probably true that there is not sufficient information in the affidavits mentioned herein to draw an indictment upon, there is sufficient information to warrant the presentation of the same to a grand jury, at which time, we are confident, more convincing testimony can be secured from the parties to this alleged conspiracy.

Very respectfully,

HORACE TILLARD JONES,
Special Agent, G. L. O.

The CHAIRMAN. Do you offer that in evidence?

Mr. VERTREES. Yes, sir.

The CHAIRMAN. It is admitted.

Mr. TODD. May I make a request; that is a part of the original files of my office—

The CHAIRMAN. It will be copied and given back to you. You want this paper back?

Mr. TODD. If it can be forwarded to me at Seattle that will be satisfactory.

The CHAIRMAN. That will be done.

Mr. VERTREES. Mr. Todd, what did you do with reference to that communication?

Mr. TODD. I think Mr. Jones brought these affidavits in with the letter, but I had no extended conversation with him at that time. I said I would examine the affidavits and see under what statute we could prosecute. It was his idea and Mr. Glavis's, as I remember, that we could prosecute under 4746, which is a statute to punish the procurement and filing of false affidavits. I examined those affidavits, and on May 13 I wrote Mr. Jones that the affidavits did not of themselves set out enough evidence to proceed on, and I asked him to bring in the original papers from the land office, or better yet to have a conference with me in regard to the matter.

Mr. BRANDEIS. Is that in the letter.

Mr. TODD. This is a copy I have in my hand.

The CHAIRMAN. Read it, please.

Mr. BRANDEIS. What date is it?

Mr. TODD. May 13, 1908.

(The letter is as follows:)

MAY 13, 1908.

HORACE TILLARD JONES, Esq.,

Special Agent, G. L. O., Customs-House, Portland, Oreg.

SIR: After examination of the affidavits presented to me in the Alaska land-fraud cases, I have come to the conclusion that we must have the original declarations signed by the entrymen and filed in Alaska in order to present these cases to the grand jury. The affidavits clearly show that none of the affiants knew what they were signing, except that they did sign powers of attorney. In order, therefore, to proceed against the parties who procured the false and fraudulent affidavits and declarations to be filed in the land office in Alaska, the original papers signed should be procured. If these originals can not be procured before May 25 or 26, I fear the matter will have to go over to the next grand jury. Please let me hear from you at once in regard to this matter, or, better yet, come to Seattle and confer with me in regard to the matter.

Respectfully,

United States Attorney.

The CHAIRMAN. That is admitted in evidence.

Mr. TODD. In response to that letter, Mr. Jones answered that he would be there on May 16. I haven't a copy of the letter, but that was in it. On May 16 he came into my office with the original declaratory statements of location notice in this Christopher group, and on Saturday afternoon and evening I examined these declarations and had a conference with him on Sunday morning, May 17, in my office. That was the only time I had any extended conversation with him. And at that time I informed him that prosecution could not be had under 4746, as amended by the act of 1898, but that prosecution could be had for conspiracy to defraud either in the western district of Washington or in the District of Alaska. However, the grand jury met on Tuesday, and as I had 30 cases to present, including 2 murder cases, I was too busy to give the matter the attention it required at the May grand jury, but I informed him that there would be a grand jury at Tacoma, in the same district, in six weeks—in the first part of July—and that I would present the cases at that time, and suggested the examination of witnesses and the procurement of further affidavits. All that conversation I embodied in a letter dictated in Mr. Jones's presence, addressed at his request to Mr. Glavis. It has already been put in evidence.

Mr. VERTREES. What is the date of it?

Mr. TODD. May 18, 1908. That letter embodies the whole conversation I had with Mr. Jones.

Mr. VERTREES. Mr. Todd, you say that you would prosecute at the July term. Do you mean on the papers you had then that you would undertake to bring on a prosecution or that they were to do so—get additional evidence?

The CHAIRMAN. Allow me to interrupt you. What page is that letter on?

Mr. BRANDEIS. Page 836.

Mr. TODD. I further suggested to Mr. Jones that a matter of such importance as this, criminal prosecution for violation of the coal-land laws in Alaska, should in the meantime be referred to the Commissioner of the General Land Office to get his views, because I held they could not prosecute under 4746, and they thought they could, and to get the views of the General Land Office in the matter, I suggested that they should submit the matter to the Commissioner of the General Land Office to get his views in the matter generally. They had not

consulted with him in the matter in the meantime; and as it was a voluminous case and I considered it of great importance—the prosecution of Alaska land-fraud cases for the first time—I suggested that they forward it to the commissioner for his advice in the matter.

Mr. VERTREES. Was it understood that they would do that—refer it to the General Land Office?

Mr. TODD. That was my understanding with Mr. Jones, that that matter should be immediately referred to the Land Office and come back in time for presentation to the July grand jury.

Mr. VERTREES. Were you to do it, or were they?

Mr. TODD. They were to do it.

Mr. VERTREES. Did they return to you?

Mr. TODD. I do not understand the question.

Mr. VERTREES. They were to come back before the grand jury—did they return before the July grand jury?

Mr. TODD. I never heard anything further about the matter from Mr. Glavis or Mr. Jones, until in last October, 1909, when Mr. Jones was in Seattle at the attendance of the Cunningham case, I asked him what had ever been done with those cases he presented to me at that time, and he told me in view of the decision of the Supreme Court in the Keitel case it had been decided not to prosecute them any further. The Keitel case was decided in December, 1908.

The CHAIRMAN. That was the Colorado case.

Mr. TODD. The Colorado case; yes, sir.

Mr. VERTREES. What do you know, if anything, with reference to the search made for certain letters that had been brought down from Juneau to the office at Seattle and that were missing, and with reference to a criminal prosecution against Mr. Glavis with respect to those missing letters; were you not consulted as district attorney concerning that matter?

Mr. TODD. The latter part of last December I was advised by letter that 21 or 24—I do not remember the exact number, some of the letters having been accounted for—papers from the office of Mr. Christensen, the successor of Mr. Glavis, were missing, and the evidence was submitted to me to determine whether I should take action in the matter. I might go back further; on the night that Mr. Glavis left the service I was telephoned to by his successor in office, who said that certain papers were missing from the office, and asked my advice as to what to do about the matter.

Mr. VERTREES. Just let me interrupt you long enough to ask who that successor was.

Mr. TODD. Mr. Andrew Christensen.

Mr. VERTREES. Now, Mr. Todd, state what your advice was, what passed between you and Mr. Christensen.

Mr. TODD. I advised him—that was Saturday night—by telephone, that I thought without doubt that Mr. Glavis had taken the papers by mistake and would return them next day, and that if he did not do that, to take the matter up with me again.

Mr. VERTREES. Later, as I understand you, Mr. Christensen did take the matter up with you again—the matter of prosecution?

Mr. TODD. In the latter part of December he took the matter up with me again as to these missing letters, which had been missing ever since Mr. Glavis left the service and which we knew had been in somebody's possession, because copies of them appeared in Collier's from time to time, with the remark that there were more to follow.

Mr. VERTREES. Do you recall the dates those appeared in Collier's?

Mr. TODD. I do not.

Mr. VERTREES. But that they did appear you know?

Mr. TODD. I saw them, because I take Collier's.

Mr. VERTREES. Who was your assistant at that time?

Mr. TODD. My first assistant was Mr. Charles T. Hudson. My second assistant was Mr. McLaren,

Mr. VERTREES. Do you know whether your assistant was also consulted with reference to prosecuting Mr. Glavis about that matter?

Mr. TODD. I do not know of my own knowledge.

Mr. VERTREES. Did you have any information to the effect that we had been or was consulted?

Mr. TODD. I was informed that he was consulted—next day being Sunday, I was out of town—that Mr. Christensen had consulted Mr. Hudson.

Mr. VERTREES. You may examine Mr. Todd, Mr. Brandeis.

Mr. BRANDEIS. Mr. Todd, are you not mistaken in saying that none of these claims except the Christopher group were involved in this inquiry?

Mr. TODD. None of the claims except those which were known as the Christopher group were involved in this inquiry.

Mr. BRANDEIS. Is it not a fact that the Simmonds group is a separate group of claims, and is it not also a fact that you were consulted in reference to the Simmonds group?

Mr. TODD. As far as information was given me at that time it was represented to me by Mr. Jones that this was one entire group, that Mr. Simmonds and Mr. Christopher were the locators, and that it was an entire group; that is all the information I had.

Mr. BRANDEIS. Now, Mr. Todd, I will ask you to look at the report of Mr. Jones of August 13, 1907, which appears in the chronological list at pages 30 to 36, and say whether you do not find there a clear distinction between the Christopher group and the Simmonds group?

Mr. TODD. I do not know whether there is a distinction in the report, but in the papers Mr. Jones presented to me there was but one group included.

Mr. BRANDEIS. But they were both Simmonds and Christopher?

Mr. TODD. I do not know whether they were both.

Mr. BRANDEIS. Look at that letter and say whether Christopher and Simmonds are not both included in that letter.

Mr. TODD. Yes; there were Christopher and Simmonds, who were both interested in that group.

Mr. BRANDEIS. If it was one group.

Mr. TODD. Now, if you will tell me how many groups Christopher made up.

Mr. BRANDEIS. You can see.

Mr. TODD. I can not say. I am not familiar with these papers. If you will kindly point out to me how many claims the Christopher group included I will do so.

Mr. BRANDEIS. I can, but I will pass from that for a moment. Is it not a fact, Mr. Todd, that this matter was taken up with you before April 21, the date you gave when Mr. Glavis introduced Mr. Jones to you?

Mr. TODD. It was not taken up with me, Mr. Brandeis. My recollection is that Mr. Glavis called at my office in reference to the Portland Coal and Coke Company case and Watson Allen's case and at that time told me he had some matters he would like to present to me about these Alaska claims.

Mr. BRANDEIS. Do you remember in the daily report of Mr. Glavis of April 11, on page 861 of the testimony, when he did confer with you about this case, it appears further "and referring to evidence obtained in Alaska coal cases with a view to criminal prosecution?"

Mr. TODD. I notice his report so states, but it is not exactly correct. He simply mentioned the matter.

Mr. BRANDEIS. To you?

Mr. TODD. Yes, sir.

Mr. BRANDEIS. Well, now, did he not at that time take up the further question of getting the original papers in the case?

Mr. TODD. I do not remember.

Mr. BRANDEIS. I call attention to certain telegrams which are constructively in evidence in this case already, but have not appeared through the way in which they appear in the Senate document embodied in Mr. Dennett's statement. They were through inadvertence not included in Mr. Sleman's list. I think they had better be put in in full now.

The CHAIRMAN. They are in. The whole record is in.

Mr. BRANDEIS. The record is in, but the letters do not appear in the chronological list and they do not appear in the testimony, and it is for that reason I think attention ought to be formally called to them, so that they might appear here. I will read the translation, but I think the cipher and translation should both appear in the record.

(The telegram is as follows:)

[Cipher.]

SEATTLE, WASH., April 10, 1908.

COMMISSIONER GENERAL LAND OFFICE,
Washington, D. C.

Forward to me at Portland all original papers relating to Iricgi dagkels and dahlines; also wire polocos in Iricgi to do likewise. Citola next October. Cases therefore must be presented next month. Only Comemds and Sylacdebyol groups now involved. But all papers are necessary should others develop, as time would then be too limited to secure same. Cunningham group excepted.

GLAVIS, Chief.

[Translation.]

Forward to me at Portland all original papers relating to Alaska coal cash entries and coal declaratory statements. Also wire local land office in Alaska to do likewise. Statute of limitation will prevent criminal prosecution after next October. The cases, therefore, must be presented next month. Only Simmons and Christopher groups now involved. But all papers are necessary should others develop, as time would then be too limited to secure same. Cunningham group excepted.

Mr. VERTREES. Whose telegram is that?

Mr. BRANDEIS. That is the telegram signed "Glavis, chief."

Mr. JAMES. To whom was the telegram addressed?

Mr. BRANDEIS. To the Commissioner of the General Land Office. The answer of April 13 is as follows:

[Telegram.]

WASHINGTON, D. C., April 13, 1908.

Special Agent LOUIS R. GLAVIS, *Portland, Oreg.*:

No dagkels or papers in this office, except Cunningham group. Pergis, Wumoiu, bejaded to-day to forward papers.

DENNETT, *Commissioner.*

[Translation.]

No coal cash entries or papers in this office except Cunningham group. R. & R., Juneau, wired to-day to forward papers.

Mr. BRANDEIS. I also in this connection call attention to the letter of the register and receiver at Juneau appearing on page 493.

The CHAIRMAN: Of the testimony?

Mr. BRANDEIS. Of Senate Document 248, constructively in evidence, but which has not gone into our record. It should be introduced in full here. It is as follows:

DEPARTMENT OF THE INTERIOR,
UNITED STATES LAND OFFICE,
Juneau, Alaska, May 20, 1908.

The COMMISSIONER OF THE GENERAL LAND OFFICE,
Washington, D. C.

SIR: Upon receipt of your telegraphic instructions, April 13, 1908, all of the papers to file in this office relating to coal land declaratory statements and pending applications and entries were prepared and forwarded to L. R. Glavis, chief of field division, Portland, Oregon, as therein directed.

Since mailing said papers as above the claimant in coal land application No. 93, Harry White, Butte claim, C. L. D. S. No. 82, has on May 13, 1908, made final payment of \$1,598.40 for same, and the receiver has issued his receipt No. 34 therefor.

Although the register had examined the proofs in this case before their transmittal to Mr. Glavis, and found that they were complete and regular, yet he does not feel justified in issuing final certificate of entry in said case on account of not having the papers actually in this office.

As the above is one of several cases, involving coal land applications Nos. 34 to 112, inclusive, we respectfully ask to be instructed as to whether entry may be properly made in the absence of the proof papers from this office.

Respectfully,

(Signed) JOHN W. DUDLEY, *Register.*
(Signed) P. M. MULLEN, *Receiver.*

Now, you referred, as I recall it, Mr. Todd, to a visit that Mr. Glavis and Mr. Jones made at your office on the 21st of April, 1908?

Mr. TODD. Yes, sir.

Mr. BRANDEIS. Did not Mr. Jones also confer with you on the 22d of April?

Mr. TODD. I say he may have come in with those affidavits that accompanied the letter; I do not remember. The letter from Mr. Jones transmitting the affidavits is dated April 22; whether he brought it in himself or sent it by mail, I do not now remember. I think he brought it in.

Mr. BRANDEIS. On page 906 of the testimony in his daily reports he states:

Submitted affidavits with letter of transmittal and had conference relating to same with E. E. Todd, United States attorney at Seattle, Wash., in re criminal prosecution of Christopher and others for frauds in Alaska coal lands.

Do you recall that conference to which he refers?

Mr. TODD. It was not a conference. If he came in, he simply left the letter and affidavits, because I told him I could not give him any opinion without an examination.

consulted with him in the matter in the meantime; and as it was a voluminous case and I considered it of great importance—the prosecution of Alaska land-fraud cases for the first time—I suggested that they forward it to the commissioner for his advice in the matter.

Mr. VERTREES. Was it understood that they would do that—refer it to the General Land Office?

Mr. TODD. That was my understanding with Mr. Jones, that that matter should be immediately referred to the Land Office and come back in time for presentation to the July grand jury.

Mr. VERTREES. Were you to do it, or were they?

Mr. TODD. They were to do it.

Mr. VERTREES. Did they return to you?

Mr. TODD. I do not understand the question.

Mr. VERTREES. They were to come back before the grand jury—did they return before the July grand jury?

Mr. TODD. I never heard anything further about the matter from Mr. Glavis or Mr. Jones, until in last October, 1909, when Mr. Jones was in Seattle at the attendance of the Cunningham case, I asked him what had ever been done with those cases he presented to me at that time, and he told me in view of the decision of the Supreme Court in the Keitel case it had been decided not to prosecute them any further. The Keitel case was decided in December, 1908.

The CHAIRMAN. That was the Colorado case.

Mr. TODD. The Colorado case; yes, sir.

Mr. VERTREES. What do you know, if anything, with reference to the search made for certain letters that had been brought down from Juneau to the office at Seattle and that were missing, and with reference to a criminal prosecution against Mr. Glavis with respect to those missing letters; were you not consulted as district attorney concerning that matter?

Mr. TODD. The latter part of last December I was advised by letter that 21 or 24—I do not remember the exact number, some of the letters having been accounted for—papers from the office of Mr. Christensen, the successor of Mr. Glavis, were missing, and the evidence was submitted to me to determine whether I should take action in the matter. I might go back further; on the night that Mr. Glavis left the service I was telephoned to by his successor in office, who said that certain papers were missing from the office, and asked my advice as to what to do about the matter.

Mr. VERTREES. Just let me interrupt you long enough to ask who that successor was.

Mr. TODD. Mr. Andrew Christensen.

Mr. VERTREES. Now, Mr. Todd, state what your advice was, what passed between you and Mr. Christensen.

Mr. TODD. I advised him—that was Saturday night—by telephone, that I thought without doubt that Mr. Glavis had taken the papers by mistake and would return them next day, and that if he did not do that, to take the matter up with me again.

Mr. VERTREES. Later, as I understand you, Mr. Christensen did take the matter up with you again—the matter of prosecution?

Mr. TODD. In the latter part of December he took the matter up with me again as to these missing letters, which had been missing ever since Mr. Glavis left the service and which we knew had been in somebody's possession, because copies of them appeared in Collier's from time to time, with the remark that there were more to follow.

Mr. VERTREES. Do you recall the dates those appeared in Collier's?

Mr. TODD. I do not.

Mr. VERTREES. But that they did appear you know?

Mr. TODD. I saw them, because I take Collier's.

Mr. VERTREES. Who was your assistant at that time?

Mr. TODD. My first assistant was Mr. Charles T. Hudson. My second assistant was Mr. McLaren,

Mr. VERTREES. Do you know whether your assistant was also consulted with reference to prosecuting Mr. Glavis about that matter?

Mr. TODD. I do not know of my own knowledge.

Mr. VERTREES. Did you have any information to the effect that he had been or was consulted?

Mr. TODD. I was informed that he was consulted—next day being Sunday, I was out of town—that Mr. Christensen had consulted Mr. Hudson.

Mr. VERTREES. You may examine Mr. Todd, Mr. Brandeis.

Mr. BRANDEIS. Mr. Todd, are you not mistaken in saying that none of these claims except the Christopher group were involved in this inquiry?

Mr. TODD. None of the claims except those which were known as the Christopher group were involved in this inquiry.

Mr. BRANDEIS. Is it not a fact that the Simmonds group is a separate group of claims, and is it not also a fact that you were consulted in reference to the Simmonds group?

Mr. TODD. As far as information was given me at that time it was represented to me by Mr. Jones that this was one entire group, that Mr. Simmonds and Mr. Christopher were the locators, and that it was an entire group; that is all the information I had.

Mr. BRANDEIS. Now, Mr. Todd, I will ask you to look at the report of Mr. Jones of August 13, 1907, which appears in the chronological list at pages 30 to 36, and say whether you do not find there a clear distinction between the Christopher group and the Simmonds group?

Mr. TODD. I do not know whether there is a distinction in the report, but in the papers Mr. Jones presented to me there was but one group included.

Mr. BRANDEIS. But they were both Simmonds and Christopher?

Mr. TODD. I do not know whether they were both.

Mr. BRANDEIS. Look at that letter and say whether Christopher and Simmonds are not both included in that letter.

Mr. TODD. Yes; there were Christopher and Simmonds, who were both interested in that group.

Mr. BRANDEIS. If it was one group.

Mr. TODD. Now, if you will tell me how many groups Christopher made up.

Mr. BRANDEIS. You can see.

Mr. TODD. I can not say. I am not familiar with these papers. If you will kindly point out to me how many claims the Christopher group included I will do so.

Mr. BRANDEIS. I can, but I will pass from that for a moment. Is it not a fact, Mr. Todd, that this matter was taken up with you before April 21, the date you gave when Mr. Glavis introduced Mr. Jones to you?

Mr. TODD. It was not taken up with me, Mr. Brandeis. My recollection is that Mr. Glavis called at my office in reference to the Portland Coal and Coke Company case and Watson Allen's case, and at that time told me he had some matters he would like to present to me about these Alaska claims.

Mr. BRANDEIS. Do you remember in the daily report of Mr. Glavis of April 11, on page 861 of the testimony, when he did confer with you about this case, it appears further "and referring to evidence obtained in Alaska coal cases with a view to criminal prosecution?"

Mr. TODD. I notice his report so states, but it is not exactly correct. He simply mentioned the matter.

Mr. BRANDEIS. To you?

Mr. TODD. Yes, sir.

Mr. BRANDEIS. Well, now, did he not at that time take up the further question of getting the original papers in the case?

Mr. TODD. I do not remember.

Mr. BRANDEIS. I call attention to certain telegrams which are constructively in evidence in this case already, but have not appeared through the way in which they appear in the Senate document, embodied in Mr. Dennett's statement. They were through inadvertence not included in Mr. Sleman's list. I think they had better be put in in full now.

The CHAIRMAN. They are in. The whole record is in.

Mr. BRANDEIS. The record is in, but the letters do not appear in the chronological list and they do not appear in the testimony, and it is for that reason I think attention ought to be formally called to them, so that they might appear here. I will read the translation, but I think the cipher and translation should both appear in the record.

(The telegram is as follows:)

[Cipher.]

SEATTLE, WASH., April 10, 1908.

COMMISSIONER GENERAL LAND OFFICE,
Washington, D. C.

Forward to me at Portland all original papers relating to Iricgi dagkels and dahlines; also wire polocos in Iricgi to do likewise. Citola next October. Cases therefore must be presented next month. Only Comemds and Sylacdebyol groups now involved. But all papers are necessary should others develop, as time would then be too limited to secure same. Cunningham group excepted.

GLAVIS, Chief.

[Translation.]

Forward to me at Portland all original papers relating to Alaska coal cash entries and coal declaratory statements. Also wire local land office in Alaska to do likewise. Statute of limitation will prevent criminal prosecution after next October. The cases, therefore, must be presented next month. Only Simmons and Christopher groups now involved. But all papers are necessary should others develop, as time would then be too limited to secure same. Cunningham group excepted.

Mr. VERTREES. Whose telegram is that?

Mr. BRANDEIS. That is the telegram signed "Glavis, chief."

Mr. JAMES. To whom was the telegram addressed?

Mr. BRANDEIS. To the Commissioner of the General Land Office. The answer of April 13 is as follows:

[Telegram.]

WASHINGTON, D. C., April 13, 1908.

Special Agent LOUIS R. GLAVIS, *Portland, Oreg.*:

No dagkels or papers in this office, except Cunningham group. Pergis, Wumoiu, bejahed to-day to forward papers.

DENNETT, *Commissioner.*

[Translation.]

No coal cash entries or papers in this office except Cunningham group. R. & R., Juneau, wired to-day to forward papers.

Mr. BRANDEIS. I also in this connection call attention to the letter of the register and receiver at Juneau appearing on page 493.

The CHAIRMAN. Of the testimony?

Mr. BRANDEIS. Of Senate Document 248, constructively in evidence, but which has not gone into our record. It should be introduced in full here. It is as follows:

DEPARTMENT OF THE INTERIOR,
UNITED STATES LAND OFFICE,
Juneau, Alaska, May 20, 1908.

The COMMISSONER OF THE GENERAL LAND OFFICE,
Washington, D. C.

SIR: Upon receipt of your telegraphic instructions, April 13, 1908, all of the papers on file in this office relating to coal land declaratory statements and pending applications and entries were prepared and forwarded to L. R. Glavis, chief of field division, Portland, Oregon, as therein directed.

Since mailing said papers as above the claimant in coal land application No. 93, Harry White, Butte claim, C. L. D. S. No. 82, has on May 18, 1908, made final payment of \$1,598.40 for same, and the receiver has issued his receipt No. 34 therefor.

Although the register had examined the proofs in this case before their transmittal to Mr. Glavis, and found that they were complete and regular, yet he does not feel justified in issuing final certificate of entry in said case on account of not having the papers actually in this office.

As the above is one of several cases, involving coal land applications Nos. 34 to 112, inclusive, we respectfully ask to be instructed as to whether entry may be properly made in the absence of the proof papers from this office.

Respectfully,

(Signed) JOHN W. DUDLEY, *Register.*
(Signed) P. M. MULLEN, *Receiver.*

Now, you referred, as I recall it, Mr. Todd, to a visit that Mr. Glavis and Mr. Jones made at your office on the 21st of April, 1908?

Mr. TODD. Yes, sir.

Mr. BRANDEIS. Did not Mr. Jones also confer with you on the 22d of April?

Mr. TODD. I say he may have come in with those affidavits that accompanied the letter; I do not remember. The letter from Mr. Jones transmitting the affidavits is dated April 22; whether he brought it in himself or sent it by mail, I do not now remember. I think he brought it in.

Mr. BRANDEIS. On page 906 of the testimony in his daily reports he states:

Submitted affidavits with letter of transmittal and had conference relating to same with E. E. Todd, United States attorney at Seattle, Wash., in re criminal prosecution of C. Christopher and others for frauds in Alaska coal lands.

Do you recall that conference to which he refers?

Mr. TODD. It was not a conference. If he came in, he simply left the letter and affidavits, because I told him I could not give him any opinion without an examination.

Mr. BRANDEIS. Would it not be possible to confer without your giving him a definite opinion?

Mr. TODD. It is possible.

Mr. BRANDEIS. You can not conceive of any reason, can you, why Mr. Jones should recite in his daily report that he had a conference without actually having one?

Mr. TODD. I can not conceive of a great deal of Mr. Jones's testimony.

Mr. BRANDEIS. Can you conceive of any reason for this, Mr. Todd?

Mr. TODD. Yes; that he was trying to show that he was working all the time, when he was not.

Mr. BRANDEIS. You think he was not working?

Mr. TODD. I do not think so.

Mr. BRANDEIS. Well, what was he doing?

Mr. TODD. Why, Mr. Jones was running around here and there making daily reports.

Mr. BRANDEIS. Is that all he did?

Mr. TODD. That is all I ever saw he did.

Mr. BRANDEIS. Well, he submitted this matter to you quite fully. did he not?

Mr. TODD. Not very fully; he did not submit them as fully as he should have submitted them.

Mr. BRANDEIS. Is there any reference in your correspondence to that fact?

Mr. TODD. Yes, sir.

Mr. BRANDEIS. Where?

Mr. TODD. I will show it to you. He simply took affidavits of some people in Seattle and without anything further presented them to me stating there was not enough to draw an indictment on, and asked me to prosecute on them, and I wrote back as follows:

I think before final action is taken, further investigation should be made outside of Seattle to obtain testimony from other locators as to what the arrangement was with the promoters.

Mr. BRANDEIS. You are holding him responsible for the fact of not making further investigations.

Mr. TODD. I do not know whose fault it was that further investigations were not made.

Mr. BRANDEIS. You do not know whether it was his fault or the fault of the General Land Office, do you?

Mr. TODD. I know from information I have received, but not from my own knowledge.

Mr. BRANDEIS. What information have you received?

Mr. TODD. Because Mr. Jones and Mr. Glavis held this letter of mine written May 18, suggesting that the matter be taken up before the July grand jury, and they, knowing that the statute of limitations would run, never took a step to do anything for three weeks, until June 8, and then Mr. Glavis drafted a letter which he never sent.

Mr. BRANDEIS. What did they do during that time?

Mr. TODD. During that three weeks?

Mr. BRANDEIS. Yes.

Mr. TODD. Mr. Glavis was in Portland every day, according to his daily reports.

Mr. BRANDEIS. When did the statute of limitations expire?

Mr. TODD. I was of the opinion that the only safe time to present them was during the July term of court in Tacoma, because there was some doubt as to when the statute did run, but it was in the fall or December, 1908.

Mr. BRANDEIS. Was it not stated that it did not expire until October?

Mr. TODD. I stated, I think, that it probably did not expire until December, but this is what I told them in my letter:

If they think a criminal prosecution should be commenced, it should be taken up by the grand jury which will convene in Tacoma on July 7, 1907—

That is a mistake; it should be 1908.

Mr. BRANDEIS. That was a mistake of yours?

Mr. TODD. That was a mistake in the copy of the letter which you have before you. It should be 1908 instead of 1907.

Mr. BRANDEIS. What was the next thing that happened after this?

Mr. TODD. Nothing ever happened after this relative to my prosecution of the case, because they never came back to me.

Mr. BRANDEIS. I am referring now to the 22d of April. The 22d was the date when he had the conference with you, according to his daily record, which you do not remember.

Mr. TODD. I examined the affidavits and wrote a letter on May 13.

Mr. BRANDEIS. Yes; but before May 13 did not something happen?

Mr. TODD. After April 22?

Mr. BRANDEIS. Yes.

Mr. TODD. Not that I remember of.

Mr. BRANDEIS. You have not a complete file of your records in this case, have you?

Mr. TODD. No; because Mr. Glavis took my file from my office last June and then later I had to get this letter of Mr. Jones from Mr. Christensen's office.

Mr. BRANDEIS. That is the Land Office file?

Mr. TODD. No; that letter of Mr. Jones is part of my original file. Mr. Glavis called at my office, and through mistake my clerk gave him all my file too.

Mr. BRANDEIS. As a matter of fact, did not Mr. Jones write you on the 28th of April on this very subject?

Mr. TODD. I do not remember.

Mr. BRANDEIS. Then, Mr. Jones called at your office on the 16th of May?

Mr. TODD. Yes, sir.

Mr. BRANDEIS. With the original papers which he had meanwhile received from Alaska?

Mr. TODD. Yes, sir.

Mr. BRANDEIS. And he was there besides on the 16th of May and the 17th of May, was he not?

Mr. TODD. Yes, sir.

Mr. BRANDEIS. And then on the 18th you wrote that letter?

Mr. TODD. No; I wrote that letter on the 17th.

Mr. BRANDEIS. Then, why is it dated on the 18th?

Mr. TODD. Because I dictated it on Sunday, and my clerk wrote it on Monday, which was the 18th. I dictated it in Mr. Jones's presence.

Mr. BRANDEIS. Well, then, it was written on the 18th, though dictated on the 17th; you signed it on the 18th. Is that not a fact?

Mr. TODD. I presume so. I do not know when the clerk wrote it out, but I presume he transmitted it on the 18th.

Mr. BRANDEIS. You sent it on the 18th?

Mr. TODD. I presume so; I do not remember.

Mr. BRANDEIS. Well, now, you have spoken of the letter of June 8, 1908, on this matter.

Mr. TODD. Yes; a letter which was never sent.

Mr. BRANDEIS. How do you know it was never sent?

Mr. TODD. Because Mr. Glavis has so testified before this committee.

Mr. BRANDEIS. Is that all you know about it?

Mr. TODD. And because the letter as drafted was found in his office and shown to me.

Mr. BRANDEIS. Where is that letter?

Mr. TODD. I do not know.

Mr. BRANDEIS. I will introduce that, Mr. Chairman. It is taken from the files sent here by the Forestry Service.

(The letter is as follows:)

PORTLAND, OREG., June 8, 1908.

COMMISSIONER GENERAL LAND OFFICE,
Washington, D. C.

SIR: On April 28, 1908, Special Agent Horace Tillard Jones addressed a letter to Hon. Elmer E. Todd, United States attorney, at Seattle, Wash., wherein he presented to the said United States attorney, affidavits and exhibits relating to alleged frauds in Alaska coal mines by Cornelius Christopher, Mortimer C. Sweeney, and George C. Simmonds, and requested that the said parties be indicted under section 5440 and amended 4746, Revised Statutes of the United States, by the grand jury which was to meet May 20, 1908.

On May 16, 1908, Mr. Jones, at the request of the United States attorney for the district of Washington, went to Seattle, Wash., for the purpose of assisting in the presentation of said cases before the grand jury in the said State. After conferring with Mr. Todd about this matter it was decided that the case should first be presented to your office, and by your office presented to the Department of Justice, in order that Mr. Todd might have specific authority under which to take these Alaska cases up before the grand jury. This was done for the reason that these cases are the first that will have been prosecuted with respect to Alaska coal lands, and for the further reason that Mr. Todd was doubtful as to his authority to proceed in the matter without specific instructions from the Department of Justice. Acting upon this understanding, Mr. Todd addressed a letter to me on May 18, 1908, wherein he set forth the leading and important points in regard to said cases, as shown by the affidavits submitted to him. In the said letter he recommends that before final action is taken further investigation should be made outside of Seattle to obtain testimony from other parties located in Alaska, as to what their arrangements were with the promoters. In this he refers to the parties living in certain States in the Middle West.

The federal grand jury for the western district of Washington will meet at Tacoma about July 7, 1908, and if it is decided by your office that these cases should be presented to the said grand jury the matter will be taken up at that time.

I, therefore, have the honor to transmit herewith all letters and copies of all affidavits taken with respect to the alleged fraudulent coal entries, also a map showing claims of the Great Western coal group, and respectfully request that early action be taken; and in the event that this matter is to be presented that all said papers be returned to me.

Respectfully,

Chief of Field Division.

Mr. OLMSTED. Is that the letter that it is stated was not sent?

Mr. BRANDEIS. That is the letter which Mr. Todd stated was not sent.

Mr. TODD. I have not seen the letter. I have not stated that this letter was not sent. I said that the letter that was in the files was not sent. If you will permit me I will examine this letter.

Mr. DENBY. Is that letter addressed to the Commissioner of the Land Office?

Mr. BRANDEIS. Yes, sir; to the Commissioner of the General Land Office.

Mr. VERTREES. This is what purports to be a copy of the original.

Mr. TODD. I will state that this is a copy of the original letter that was shown me; that was found in Mr. Glavis's office and never had been sent.

Mr. OLMSTED. Did you not state that it came from the Forestry Bureau?

Mr. BRANDEIS. From the Forestry Bureau; yes, sir; the files of the Forestry Bureau.

The CHAIRMAN. And not from the General Land Office?

Mr. VERTREES. And is a copy?

The CHAIRMAN. And is a copy.

Mr. BRANDEIS. Now, Mr. Todd, in your letter of May 18—

The CHAIRMAN. Let me understand this matter. Was that a letter sent from the Forestry Bureau and not from the General Land Office?

Mr. BRANDEIS. It is one of the copies that was sent at the request, I think, of Mr. Vertrees, or of the committee—sent up from the Forestry Bureau from the copies they have.

The CHAIRMAN. But this letter of Glavis's, was that sent to the Land Office or was it sent to the Forestry Bureau?

Mr. BRANDEIS. This particular paper which I have introduced is from the Forestry Bureau.

Mr. DENBY. Was the original ever sent to the Commissioner of the General Land Office?

Mr. BRANDEIS. That is a question that I do not want to testify to. There is no evidence of it.

Mr. McCALL. Does it appear how it got there?

Mr. BRANDEIS. Yes, sir.

Mr. McCALL. To whom was this directed?

Mr. BRANDEIS. To the Commissioner of the General Land Office. Mr. Denby, you may remember copies of the papers in this Alaska coal case were sent to the Forestry Bureau.

The CHAIRMAN. How do we know that this copy was sent to the Forestry Bureau and not to the General Land Office?

Mr. BRANDEIS. We do not know it. There is no testimony direct on that point at the present time.

Mr. DENBY. Was that not the testimony of the witness, that he understood the original had not been sent to the General Land Office?

Mr. BRANDEIS. I do not care to quote it from memory.

Senator PURCELL. He swears that it has not been sent?

Mr. TODD. I swore that that was my information; I do not know about it personally.

Mr. VERTREES. I desire to call the committee's attention to page 146 of the record of the testimony. It is Mr. Glavis's testimony in this case, and among other things there, Mr. Glavis says:

I had a conference once or twice, I think, with him about that—

Mr. BRANDEIS. Who is "him?"

Mr. VERTREES. Mr. Todd is "him" and Mr. Glavis is the man who is telling about "him."

I had a conference once or twice, I think, with him about that—at least I talked to him about it, and he wrote me this letter, and I prepared a report along in June to the Commissioner of the General Land Office, stating the facts, which I intended to

transmit along with a copy of the United States attorney's letter, and recommended that the Department of Justice be directed to request the United States attorney to present the matter to the grand jury.

The CHAIRMAN. There is evidence that it never was sent. You knew that. Now, why did you not tell the committee that?

Mr. BRANDEIS. I did not know it. I do not know it now.

The CHAIRMAN. That is Mr. Glavis's testimony. Why did you conceal that fact when you offered that?

Mr. BRANDEIS. Mr. Chairman, I object strenuously to any such suggestion as that, that I concealed anything from this committee; I think that statement is absolutely improper and ought to be withdrawn.

Mr. GRAHAM. I think it ought to be withdrawn, and I move that the Chairman be requested to do it.

Mr. JAMES. I second the motion.

Mr. DENBY. In order to have this matter clear, I will state that it appears to me—and I may have got it wrong; I do not wish to get into any controversy—but it certainly appeared to me that the counsel endeavored to have the committee understand from the testimony of this witness that the letter had been sent, and this witness said, "I do not know; we had some talk concerning the sending of that letter." Now, it appears by the testimony of Mr. Glavis the original had not been sent, and the witness is correct in his statement. It did seem to me—and I wish to be entirely fair—that the counsel tried to make this committee believe that the letter had been sent. It may be due to my own misunderstanding.

Mr. BRANDEIS. Mr. Denby, if you had waited, and the chairman had waited, until I had put one or two questions more you would have seen this matter in the proper light.

Mr. DENBY. I merely wish to have this statement go on record as representing my view on account of the outburst of counsel.

Mr. BRANDEIS. I think the outburst of counsel was justified.

Mr. JAMES. How could the counsel be charged with trying to mislead the committee about testimony which the committee itself heard?

Mr. BRANDEIS. This witness has himself testified to the fact.

Mr. TODD. No; I—

Mr. GRAHAM. The point about the matter now which is acute is this, that the chairman has charged Mr. Brandeis with deliberately meaning to mislead the committee. I think the chairman surely ought to withdraw that statement, and my motion is that he shall.

The CHAIRMAN. I do not withdraw it.

Mr. GRAHAM. There is a motion pending, Mr. Chairman.

The CHAIRMAN. Mr. Denby, I think, looks at the matter as I do.

Mr. GRAHAM. The motion has been made by me that the chairman be requested to withdraw it, and I insist that my motion be put, and on that motion I demand a roll call.

Senator PURCELL. It seems to me that on this matter we need not get into difficulty between ourselves.

Mr. MCCALL. Yes; it is entirely unnecessary. I want to suggest that I do not think Mr. Brandeis deliberately intended to mislead the committee. He has conducted the case properly, but I do not think, on the other hand, this motion is necessary, to put this question to a vote before the committee now.

Mr. GRAHAM. Mr. Chairman, I insist——

Senator PURCELL. Mr. Glavis himself said, "I did not send it," and gives his reason for it, and he knows as much about the evidence as the chairman.

The CHAIRMAN. He was cross-examining him on that line. The attorney here testified that he had written the letter but never had sent it, and then the counsel brought in this letter, this copy of a letter, and had it read here. Now, what was the object of reading a letter that had never been sent?

Senator PURCELL. To show a conversation between him and Mr. Glavis, not so much that it was sent to the department as to show the talk he had.

The CHAIRMAN. I certainly got the same impression that Mr. Denby got.

Mr. DENBY. Mr. Brandeis said to the witness, "Then the letter had not been sent."

Senator PURCELL. And this witness said that Mr. Glavis had sworn that it was not sent.

Mr. JAMES. But at the same time, gentlemen, you must remember that when Mr. Brandeis said that he stated that the letter had been sent, the copy was in the Forestry Department, and the point I make is this, that a lawyer in cross-examining a witness ought not to be jerked up upon a statement that he makes to a witness, or upon a question he has asked a witness, upon which there may be a conflict of ideas, and of the testimony upon a question, and to have it said to him that he is trying to mislead the committee on that question.

Mr. GRAHAM. There is nothing that Mr. Brandeis has said that is inconsistent, as I see it. We can not assume that Mr. Brandeis remembers everything that has been testified to in the 2,500 pages of the testimony before us; but the chairman assumed that he did know it, and that knowing it he intentionally attempted, or tried, to deceive the committee. There is no use glossing it over. Now, it is not the first time that the chairman has by inference reflected upon Mr. Brandeis, and my motion is that it is the sense of the committee that the chairman be requested to withdraw that statement. That motion has been seconded, and I insist, if the chairman declines to put it, that it shall be put before the committee.

Mr. OLMSTED. I do not think that it is a question for the committee to pass upon.

Mr. McCALL. I do not think we ought to vote on any such motion.

Mr. GRAHAM. It has happened too often.

Senator PURCELL. I think you ought to withdraw that motion.

Mr. GRAHAM. No; I do not feel like withdrawing it. I want it to go on the record of the committee. I want to be fair to every attorney here, and I do not believe in personal reflections that are unnecessary.

Senator PURCELL. He may have, in the heat and zeal of the situation, said it——

Mr. GRAHAM. Then if that be true, this is the place to withdraw it.

Senator SUTHERLAND. I do not think that it is the business of this committee to instruct any member of the committee to withdraw anything that any member of the committee may have said. If the chairman thinks he has made an improper remark and wishes to withdraw it, that is a matter for him to determine; I do not think

it is a matter that ought to be properly submitted to the committee. At the same time, I am perfectly willing to vote on it.

Mr. MADISON. Mr. Chairman——

The CHAIRMAN. I will submit the question.

Mr. MADISON. One moment, Mr. Chairman. I want to make a statement with regard to my views about this matter, as long as other gentlemen about the table generally have done so. I am not at all in sympathy with the remark made by the chairman. I think it was hastily made, and that it does an injustice to counsel who was engaged in the cross-examination, in which every lawyer knows there is the widest latitude, even in the trial of law suits, and certainly there would be the widest latitude before a committee, but in the light of the fact that this fact is in the record, testified to by Mr. Glavis himself, that he did not send that letter, nobody could be deceived. Now, then——

Mr. OLMSTED. I just want to state——

Mr. MADISON. I would like to finish my statement.

Mr. OLMSTED. I just want to interrupt you a minute. Am I correct in remembering that the chairman asked Mr. Brandeis, "How do we know whether or not that letter was sent?" and Mr. Brandeis said, "You do not know?" Am I correct in that, Mr. Brandeis?

Mr. MADISON. I think that is true, and yet at the same time there is no evidence here that Mr. Brandeis acted in bad faith. I am frank to state here that I have a faint recollection, as a matter of fact, that this matter has been testified to, and that Mr. Glavis has stated that it had not been sent.

Senator SUTHERLAND. Mr. Todd testified this morning, just a few minutes ago, that Mr. Glavis had so testified.

Mr. MADISON. I just want to finish my statement. I am not going to vote for Mr. Graham's motion. I am thoroughly in accord with what Senator Sutherland has said. The chairman of this committee is no more than any member of it. He does not direct its conclusions, and he does not speak for it when he speaks here at the head of this table, but I am not going to vote at any time, so far as I am concerned, to compel any member to withdraw his remarks, or to control him in the remarks he makes. I do not believe that is my province. We are having this investigation in the eyes of the country, and if any man is biased, if any man is partial, these representatives of the press are sending it all over the country, and every man here must stand upon his own record that he is making in the eyes of the country, and I am not going to vote in anywise to restrict any man in the questions he asks, or in the things he says, so long as they express his views and not mine. I want to say now, and repeat, that I do not feel personally that anything improper was done by Mr. Brandeis.

The CHAIRMAN. The Chair will put the motion.

Mr. BRANDEIS. Mr. Chairman, may I have a word?

The CHAIRMAN. Certainly.

Mr. BRANDEIS. In view of what Judge Madison has said, and assuming that what he has said is accepted as the action of all the members of the committee, that what the chairman says, except when he says it under vote of the committee, is not the act of the committee, I am perfectly content to leave the record as it is. I desire to state, however, that the chairman himself, if he had paid

close attention, would see that his remark was entirely beyond any possibility of foundation, because not only does what Mr. Glavis said appear in the record, but everybody here could read it, and several members of the committee remember it, but this witness himself stated and repeated Mr. Glavis's testimony. In view of the fact it seems to be eminently unfounded.

The CHAIRMAN. Mr. Reporter, will you please read my question and the answer to it.

(The reporter read as follows:)

The CHAIRMAN. How do we know that this copy was sent to the Forestry Bureau and never sent to the Land Office?

Mr. BRANDEIS. You do not know it. There is no testimony direct on that point at the present time.

The CHAIRMAN. Now, you have his answer. That is all I have to say.

Mr. GRAHAM. I want to say a word in addition.

The CHAIRMAN. I will put the motion.

Mr. GRAHAM. If Judge Madison's premises be sound, if he is right in saying that the chairman is no more than a member of the committee, then his conclusion is right. But I do not quite agree with his premises. The chairman was selected by the committee as its presiding officer and is, to some extent at least, the spokesman of the committee, and we have always during our sittings gone on the theory that the words of the chairman did bind us, and on a number of occasions we have all—Judge Madison included—protested against the remarks of the chairman, because we understood that if we did not so protest the chairman would be represented as the spokesman of the committee. In view of that I made my motion; and again I say that if Judge Madison's premises are sound and the chairman is a member of the committee, and no more than that, then the conclusion he draws and the position he takes are sound also. But unless his premises are sound, then I could not agree with his conclusion.

The CHAIRMAN. Do you want me to put the motion?

Mr. GRAHAM. I am quite willing you shall, sir.

Mr. McCALL. I want to say that I quite agree with Mr. Madison in this matter. I do not think it would be incumbent upon me to offer a motion criticising Mr. Graham for the part he is taking in this proceeding. I do not think that motion should be pressed. If it is pressed, I shall vote against it for the reason that Judge Madison has stated. I want to say that I do not think Mr. Brandeis deliberately attempted to deceive the committee at all, and I would not want my vote - -

Senator PURCELL. That is just the way I feel.

Senator FLETCHER. If Mr. Graham insists upon putting the motion to the committee, I should like to offer an amendment that the remarks of the Chairman does not express the views of the committee. Will you accept the amendment, Mr. Graham?

Mr. GRAHAM. That is satisfactory to me.

Senator SUTHERLAND. I do not think this is a seemly proceeding.

Senator PURCELL. I do not think so either. I say drop it. It looks to me this way—supposing I had made that remark—

Mr. OLMSTED. I move that we go on with the examination.

Senator SUTHERLAND. I do not in any manner mean to reflect upon Mr. Graham - - -

Mr. GRAHAM. I quite agree with you that it is not seemly, but I insist that the occasion which developed it was. And all this should occur elsewhere than here.

Senator SUTHERLAND. What any member of the committee may say is a matter of taste. The chairman might say something that I might not say, and I might say something that the chairman would not say. We might differ about——

Senator PURCELL. Supposing that I had made that remark that the chairman has made, would it be proper for some member of the committee to make a motion for me or for any other man who might have made a similar remark to withdraw it, and supposing I would not withdraw it?

Mr. GRAHAM. I think, as a member of the committee, you are right.

Senator PURCELL. I believe the remark was uncalled for.

Mr. GRAHAM. I have explained my position. I had not looked upon the chairman simply as a member of the committee.

Mr. OLMSTED. I move to lay that motion on the table.

The CHAIRMAN. You have heard that motion.

(The question was thereupon put to the committee by the chairman.)

The CHAIRMAN. The ayes appear to have it.

Mr. GRAHAM. Mr. Chairman, I would like a record made of that vote.

The CHAIRMAN. Will you call the roll, please, Mr. Sleman?

Senator FLETCHER. What is the motion?

The CHAIRMAN. To lay the whole matter on the table.

Senator FLETCHER. What about the amendment?

The CHAIRMAN. That would carry it with it.

Mr. JAMES. It carries the whole thing with it.

Senator FLETCHER. Is it understood that an amendment was made to the motion?

The CHAIRMAN. Certainly.

Mr. MADISON. Hardly so. I thought the motion was directed toward laying Mr. Graham's motion on the table.

The CHAIRMAN. That would carry any amendment with it.

Mr. DENBY. The amendment had not been made; only notice had been given that the amendment would be made.

Let us have it understood.

Mr. OLMSTED. My motion was based on Mr. Madison's argument, which expresses my view entirely.

Mr. MADISON. Thank you.

Senator FLETCHER. The amendment would meet with the views of all of the committee.

Senator PURCELL. I do not know what we are voting on.

The CHAIRMAN. To lay the matter on the table. That would carry with it the amendment that was offered to it, if it was offered.

Senator PURCELL. His amendment?

The CHAIRMAN. No.

Mr. MADISON. Mr. Graham's motion.

Senator PURCELL. He made an amendment, as I understand it. You know you vote on the amendment first.

Mr. McCALL. This is a motion to lay the whole matter on the table.

The CHAIRMAN. The whole matter.

(The secretary called the roll, and the result was announced—yeas 6, nays 3, as follows: Yeas—Senator Sutherland, Senator Purcell, Representative McCall, Representative Olmsted, Representative Denby, Representative Madison. Nays—Senator Fletcher, Representative James, Representative Graham.)

The CHAIRMAN. Six yeas, 3 nays. The motion is carried.

Go on with your examination of the witness.

Mr. BRANDEIS. In your letter, Mr. Todd, which appears in the testimony on page 836, you state in the closing paragraph:

It has been suggested by the United States attorney for the eastern district of Washington, in a similar case, that the conspiracy having been entered into prior to March 2, 1905, upon which date the act dividing the district of Washington into two judicial districts was approved (33 Stat. L., chap. 1305, p. 824), a question arises as to whether a prosecution should not be instituted in the old district of Washington, in which case a special grand jury for the old district would have to be called. No grand jury for the old judicial district has been called since June 7, 1905.

Where did you get the information contained in that statement?

Mr. TODD. From Mr. Jones.

Mr. BRANDEIS. When did you get that information?

Mr. TODD. That Sunday morning when we were in the office together.

Mr. BRANDEIS. Well, now, I call your attention to the copy of a letter of June 10, 1908, which appears on page 2077 of the record, which is among the papers sent here by the Forestry Department, which reads as follows:

PORTLAND, OREG., June 10, 1908.

HONORABLE COMMISSIONER GENERAL LAND OFFICE,
Washington, D. C.

SIR: By letter "P" 38231-HHS, dated December 28, 1907, I was directed, among other things, to make an investigation regarding the method of making coal-land locations in Alaska by an investigation of each individual coal entryman; this investigation involved several different "groups" of entries, which, for convenience, are referred to in different reports, made from time to time, by the name of the party who acted as attorney or agent in the locating of the "group" of claims. Among these "groups" was that of C. H. Doughten's entries. Doughten secured powers of attorney from various residents of Spokane, Wash., and other places, wherein he was given power to locate a coal claim for the grantor of such power and in the name of the said grantor to bargain and sell the said coal claim to such person, etc., as he might see fit. At the time Doughten secured the said powers of attorney he told the persons giving the same that he was going to sell their assignments, or rights, to these claims and would give each of them one-third of the proceeds of the sale, which would amount to about three hundred and thirty (\$330.00) dollars.

In pursuance of the powers above mentioned the said Doughten located some sixty or seventy persons on coal lands in Alaska. These persons, in the most of the cases, invested to the extent of about twenty-five dollars in the development and exploitation of their claims; in some instances, however, Doughten got as high as sixty dollars from a locator. They have, in the majority of instances, executed assignments of their coal-land rights and received their third of the proceeds of sale. It is said that M. A. Green, who acted as agent for a large number of coal entries located by Seattle, Portland, and Alaska parties, put up the money, or secured the loan of the same, for the purpose of buying these assignments.

The original papers in the files of the U. S. land office at Juneau, Alaska, the greater part of which, relative to the particular cases referred to herein, have been forwarded to this office, show that each of the parties located by Doughten gave a power of attorney for the location of their respective claims, but these powers of attorney do not contain any provision for the sale of the lands located. The agreement for the sale of the said claims must have been a verbal one, or, it is possible, a separate power of attorney was given, and retained by Doughten, by the parties for the sale of the claim located. There is nothing in these original papers that could be made the base for a charge under section 4746, R. S. U. S., as amended, and the individual locator does not appear, at any point in the filing of his entry or claim, to have sworn

Mr. TODD. Will you, Mr. Chairman, allow the reporter to read that involved question question by question, so that I can answer each one as it comes up?

Senator PURCELL. Do you not understand the question?

Mr. TODD. No; I do not remember all of it, Mr. Purcell. I can remember part of it, but there is question after question that I would like to answer separately.

Senator PURCELL. I know; but he called for your judgment.

Mr. TODD. On all these different things?

Senator PURCELL. And then he asks, do you say he was not doing anything?

Mr. TODD. Well, I have to answer all these different things he says was done. The hypothetical question is not correct.

Senator SUTHERLAND. The witness may not be able to assent to each question.

Mr. JAMES. The question, as I understand it, was whether or not all these things which he has stated to you constituted taking no steps.

Senator PURCELL. If they were done, then do you know?

Mr. JAMES. Mr. Brandeis has said he would be very glad to have it read, in accordance with the suggestion of Mr. Todd.

Mr. TODD. I understand he wishes me to criticize my superior officer, and before I do that I would like to have the question read.

Mr. MADISON. I want to understand the question. Let us have the question read.

Mr. JAMES. The last statement made by the witness I did not catch—

Mr. TODD. I understand in this question, Mr. Brandeis had asked me to criticise my chief, who is the Attorney-General, and when I answer a question like that I wish to do it carefully.

The CHAIRMAN. The reporter will read Mr. Brandeis's question to the witness.

(The reporter read the question as follows:)

Do you think it is true that when he had a conference with you on the 11th of April—

Mr. TODD. He did not have a conference with me on the 11th of April. He simply came into my office and suggested there were some Alaska matters he would refer to me some time later.

Mr. BRANDEIS. Did he not then tell you that they were criminal prosecutions, and indicated to you what the nature of the criminal prosecutions was?

Mr. TODD. Yes, sir.

Mr. BRANDEIS. That is taking some steps. It may be a small one, but it is taking some.

Mr. TODD. I do not think that is taking a step; I do not think that is a single movement, unless he did something further.

Mr. GRAHAM. I would like to suggest, in order to get out of this trouble, that instead of characterizing the meetings which occurred, suppose you ask him in view of what occurred on such a date, stating the date, then put the question at the end of it. Do not characterize it as a conference or anything else, but in view of what occurred at those times.

Mr. McCALL. It seems to me the question is put all right, and the witness should proceed to answer the question.

Mr. BRANDEIS. You have never read it since?

Mr. TODD. No.

Mr. BRANDEIS. I call your attention, Mr. Todd, to the following paragraph in the letter of the Attorney-General. It appears in our testimony—

Mr. TODD. I would like to have a copy of that, so that I can read it while you are reading. I can not gather anything from your reading it.

Mr. JAMES. What page?

Mr. BRANDEIS. Pages 562 and 563 [reading]:

In this connection it may be pointed out, as an example of Glavis's habitual procrastination, that although, pursuant to his request of April 11, 1908, to forward to him all original papers relating to Alaska coal entries and declaratory statements upon his representation that the statute of limitations would prevent criminal prosecutions after the following October, and the cases must therefore be presented during the month of May, all such original papers and documents were, by direction of the General Land Office, immediately transmitted to him by the Juneau office—

And then in italics [reading]:

no proceeding whatever was taken by him to bring these criminal prosecutions or to take any steps in connection therewith.

Now, is it true, Mr. Todd, in view of the testimony which has been given by you, that no steps were taken in connection with those criminal prosecutions?

Mr. TODD. I think it is absolutely true, with the exception that he sent Mr. Jones to me with a few scattered affidavits, and when I asked him that the matter be presented to the July grand jury he never did anything further with it.

Mr. BRANDEIS. How do you know he never did anything further with it?

Mr. TODD. On information and belief.

Mr. BRANDEIS. What information have you?

Mr. TODD. I have the information that he received my letter of May 18, and never even answered it or attempted to answer it until June 8, and in his letter of June 8 there are mistakes; it is not accurately written; and he never sent it. While I had asked him or suggested that the matter be taken up with the July grand jury, he never did anything, unless he reported, as he said, to Mr. Dennett, when he was out there about the middle of July; but I had asked that the matter be presented to the grand jury.

Mr. BRANDEIS. Is it true that he never took any steps in connection with these criminal prosecutions?

Mr. TODD. I think so.

Mr. BRANDEIS. You think that is true?

Mr. TODD. I think that is true.

Mr. BRANDEIS. You think it is true that when he had a conference with you on the 11th of April, on the 21st of April, and Jones had conferences with you on the 21st of April and the 22d of April, on the 16th of May and on the 17th of May, and wrote you, as you have testified, on the 22d, and as it appears that he wrote you on other dates—that that is not taking any steps in connection with it? And do you think that if he went to the other districts—because this does not refer only to you; it refers to the western district as well—that that is not taking any steps whatever in connection with it?

Mr. TODD. Will you, Mr. Chairman, allow the reporter to read that involved question question by question, so that I can answer each one as it comes up?

Senator PURCELL. Do you not understand the question?

Mr. TODD. No; I do not remember all of it, Mr. Purcell. I can remember part of it, but there is question after question that I would like to answer separately.

Senator PURCELL. I know; but he called for your judgment.

Mr. TODD. On all these different things?

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Senator PURCELL. If they were done, then do you know?

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Mr. MADISON. I want to understand the question. Let us have the question read.

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The CHAIRMAN. The reporter will read Mr. Brandeis's question to the witness.

(The reporter read the question as follows:)

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Mr. GRAHAM. I would like to suggest, in order to get out of this trouble, that instead of characterizing the meetings which occurred, suppose you ask him in view of what occurred on such a date, stating the date, then put the question at the end of it. Do not characterize it as a conference or anything else, but in view of what occurred at those times.

Mr. MCCALL. It seems to me the question is put all right, and the witness should proceed to answer the question.

Mr. MADISON. He could have answered that question with yes or no, if it was in conformity with the facts, and then explain it fully. After he has answered it yes or no, he has the fullest opportunity to explain it.

Mr. BRANDEIS. I am very glad to have the answer specific in regard to each one of these facts. If he does not consider them steps, I would like to know which ones he does not consider as steps.

Mr. McCALL. You said no proceedings.

Mr. BRANDEIS. And no steps whatever, in the latter part of it.

(The stenographer continues reading the question, as follows:)

On the 21st of April—

Mr. TODD. There was no conference on the 21st of April.

Mr. BRANDEIS. What was there on the 21st of April?

Mr. TODD. He simply brought in Mr. Jones and introduced him to me.

Mr. BRANDEIS. You mean to say he did not talk with you on the 21st of April about this case?

Mr. TODD. He talked a very little. We did not have a conference about it. He did not even present any papers to me. There could not have been a conference—

Mr. BRANDEIS. You mean there could not be a conference without presenting papers?

Mr. TODD. Yes, sir.

Mr. BRANDEIS. Why do you give that as a reason?

Mr. TODD. Because he was not in there any length of time.

Mr. BRANDEIS. How long was he in there?

Mr. TODD. A very few minutes. If you will examine his report for that day, you will see that he was very busy doing other things.

Mr. BRANDEIS. He was accustomed to doing a great many things, but that does not prove that he did not have a conference with you.

Mr. GRAHAM. How long a time was he with you that day?

Mr. TODD. It is my recollection that he just came in between other visitors and introduced Mr. Jones, and said he would present these matters to me some time.

Mr. GRAHAM. About how many minutes?

Mr. TODD. Two or three, or three or four..

Mr. BRANDEIS. This is his daily report [reading]:

April 21, 1908, Seattle, Washington: In conference with Agents Kennedy, Stoner & Jones in re Alaska coal cases; instructed them in re same. Conferred with U. S. atty. in re criminal prosecution. Spent all afternoon in interviewing H. R. Harriman; John Davis & Claude Davis in re their Alaska coal land entries, and those in Hunt group. Examined the minutes of meeting of Alaska Petroleum & Coal Co.

And in Mr. Jones's testimony he said:

April 21st, 1908, Seattle, Wash.: Conferring with U. S. attorney in re coal flings made in interest of Christopher, Simmonds, et al. Interviewed (with L. R. Glavis) H. R. Harriman and Clark Davis in re Alaska Petroleum and Coal Co.

Do you still contend, Mr. Todd, that they were in there only two or three minutes?

Mr. TODD. No; I do not contend. That is my recollection of it.

Mr. BRANDEIS. Your unaided recollection?

Mr. TODD. Yes; my unaided recollection.

Mr. BRANDEIS. Well, now on the 22d—what is your recollection of what occurred on the 22d?

Mr. TODD. My recollection is that Mr. Jones either brought or sent in that letter, with the affidavits, which were referred to therein; but I do not recall whether he came in person or whether he sent them by some one else. I have no recollection of it.

Mr. BRANDEIS. Referring, now, to Jones's daily report of April 22, 1908, on page 906, it says:

April 22nd, 1908, Seattle, Wash.: Took afdvts. of J. L. Moseley & C. J. Munger, and interviewed J. M. Frink, in re Alaska Petroleum & Coal Co. Submitted affidavit with letter of transmittal and had conference relating to same with E. E. Todd, U. S. attorney at Seattle, Wash., in re criminal prosecution of C. Christopher and others for frauds in Alaska coal lands. Two street-car fares in Seattle, \$0.10.

That is a full day's record; and you do not remember whether you had any conference with him or not?

Mr. TODD. No; I do not say that. If he had any conference with me, I would have remembered it. What I call a conference—that is—

Mr. BRANDEIS. What do you call a conference?

Mr. TODD. I call a conference a conversation over a subject, his asking for my views, his stating facts and my giving an opinion one way or the other, and discussing the matter with some thoroughness.

Mr. BRANDEIS. How long in hours is it necessary in order that there should be a conference?

Mr. TODD. A conference might last not more than ten or fifteen minutes, or it might last a day; it might last two or three days.

Mr. BRANDEIS. You do not dignify this visit that he had with you, or the two previous ones that Glavis had with you, as being conferences?

Mr. TODD. I do not call them conferences at all.

Mr. BRANDEIS. Would you call them steps of any kind in connection with criminal prosecutions?

Mr. TODD. Oh, you might term them steps.

Mr. BRANDEIS. But you would not term them steps, if you wanted to be honest and give a thorough and clear explanation of what happened?

Mr. TODD. No; I would not. No progress was made.

Mr. BRANDEIS. People sometimes take steps backward, do they not?

Mr. TODD. It is evident they do.

Mr. BRANDEIS. And if they wanted to say whether they took steps, and state clearly and really what happened, they would say it was a step they had taken, although they had gone back?

Mr. TODD. I would not.

Mr. BRANDEIS. You would not?

Mr. TODD. No.

Mr. BRANDEIS. Well, was not this one step forward anyhow, when he laid the matters before you, even if nothing more than to elicit your criticism—that is some step, is it not?

Mr. TODD. I do not think so.

Mr. BRANDEIS. You do not? And that is the way you reconcile this fact with what the Attorney-General had said—your superior?

Mr. TODD. I do not reconcile it at all. You are just asking me whether these are steps.

Mr. BRANDEIS. Do you reconcile it?

Mr. TODD. I have never attempted to reconcile it.

Mr. BRANDEIS. Could you reconcile it?

Mr. TODD. I do not know whether I could or not.

Mr. BRANDEIS. Would you consider it insubordinate to state that criticism of your superior?

Mr. TODD. I do not think so.

Mr. BRANDEIS. Well, let us come now to March 16. Mr. Jones came at your specific request, didn't he?

Mr. TODD. You mean May 16, Mr. Brandeis?

Mr. BRANDEIS. May 16; yes.

Mr. TODD. Yes; he came in answer to a letter stating that I could do nothing with the original papers.

Mr. BRANDEIS. Without the original papers, you mean?

Mr. TODD. Yes; without the original papers; and that he send them up or, better yet, come personally and confer with me in regard to the matter.

Mr. BRANDEIS. And he was in Portland, as was Mr. Glavis?

Mr. TODD. Yes, sir.

Mr. BRANDEIS. They were at headquarters in Portland, and when they came to confer it was specially for that purpose?

Mr. TODD. I do not think Mr. Glavis came up that time.

Mr. BRANDEIS. No; I say when they did come they would have to come from Portland, unless they happened to be in Seattle on other business.

Mr. TODD. Mr. Jones was in Seattle a good deal of the time, as I understand it.

Mr. BRANDEIS. Well, he did come, in pursuance of your letter?

Mr. TODD. Yes; exactly.

Mr. BRANDEIS. And he did bring with him those original affidavits or papers which had come or been sent in pursuance of his request from Juneau?

Mr. TODD. He brought all the original powers of attorney and declaratory statements. Those were the papers he brought.

Mr. BRANDEIS. Was that not a step?

Mr. TODD. I do not know whether I would call that a step or not.

Mr. BRANDEIS. It was what you deemed to be a necessary step before there could be any prosecution?

Mr. TODD. It was a necessary thing to be done, certainly.

Mr. BRANDEIS. If it was a necessary thing, was it not a step?

Mr. TODD. I do not know.

Mr. BRANDEIS. Now, is it that you really do not know or that you do not want to say?

Mr. TODD. I do not know what your definition of a step is.

Mr. BRANDEIS. I am not asking you about my definition but what is the definition of mankind who speak the English language?

Mr. TODD. If you will tell me what the definition is I will tell you whether it is a step or not.

Mr. JAMES. The question is, in your knowledge as a lawyer, in cases of that sort, aside from the question as to whether or not it is a criticism of the Attorney-General, would you yourself refer to that as a step?

Mr. TODD. I probably would refer to that as a step, Mr. James.

Mr. BRANDEIS. Now, isn't it not only what you refer to, but would not anybody else, ordinarily considering this matter, refer to it as a step?

Mr. TODD. I can not tell you what anybody else ordinarily would do.

Mr. BRANDEIS. Have you not some judgment as to how men use the English language other than yourself?

Mr. TODD. Yes; I have some judgment.

Mr. BRANDEIS. And you have some knowledge of what proceedings are in investigating criminal cases?

Mr. TODD. Yes, sir; I have.

Mr. BRANDEIS. Now, I ask you, really to state frankly and clearly whether what has been recited up to this time is not what men ordinarily would term a step, however ineffective, in the prosecution of the duty which had been laid upon them?

Mr. TODD. The only thing in this matter that could be referred to as a step is the bringing in of these original papers and the conference in my opinion.

Mr. BRANDEIS. Is not the laying before you, the suggesting to you, of various grounds on which this prosecution could be set forth is not that a step?

Mr. TODD. I do not understand what you mean by "suggesting."

Mr. BRANDEIS. Let me have this letter of April 22.

Mr. TODD. The reporter took it out with him.

Mr. BRANDEIS. Do you recall that letter—

Mr. TODD. Fairly well.

Mr. BRANDEIS. It is a letter which sets forth what you did not read to the committee, a summary and quite a large number of affidavits?

Mr. TODD. Yes, sir; it does.

Mr. BRANDEIS. Now, is not the laying before you of that summary some step?

Mr. TODD. No; that summary there was not a step at all.

Mr. BRANDEIS. It was not a step, was it?

Mr. TODD. No; because there was no information contained in the summary which would be of any value in drawing indictments or in presenting cases to the grand jury.

Mr. BRANDEIS. I am not asking you to characterize the excellence of the service or the efficiency of the special agents—

Mr. TODD. I am telling you why it was not a step.

Mr. BRANDEIS. Is that not a step, whether you would call it so or not?

Mr. TODD. No; it is not.

Mr. BRANDEIS. Why is it not?

Mr. TODD. I say because there was nothing which you could do upon the summary. There was no information contained in it upon which you could present cases to the grand jury or upon which you could draw indictments.

Mr. BRANDEIS. Now, will you let me have that letter of May 18? Were not the affidavits themselves transmitted with that letter of April 22?

Mr. TODD. Yes, sir.

Mr. BRANDEIS. Is not the submission of those affidavits some step?

Mr. TODD. I do not think so. As I told you, Mr. Brandeis, a submission of those affidavits I did not consider any step.

Mr. BRANDEIS. What do you consider the duty was which was laid upon Mr. Jones and Mr. Glavis, or laid upon Mr. Glavis and which he had Mr. Jones largely attend to?

Mr. TODD. For these affidavits to state what these declarants had stated in the declaratory statements.

Mr. BRANDEIS. No, no, no; what was the general duty laid upon him?

Mr. TODD. Laid upon him by whom—by the Land Office?

Mr. BRANDEIS. Yes.

Mr. TODD. I do not know. I have never studied the regulations of the Land Office in regard to special agents.

Mr. BRANDEIS. What did you understand he was doing for you—he was laying before you, was he not, this matter to act upon?

Mr. TODD. I understood he was presenting facts to me.

Senator PURCELL. Mr. Todd, when he presented these affidavits to you, it gave you information of the charges and the parties, did it not?

Mr. TODD. I could not tell who were the parties and who were the witnesses, Mr. Senator.

Senator PURCELL. It gave you information of the nature of the charges, did it not?

Mr. TODD. Not clearly; no, sir, Senator.

Senator PURCELL. Well, in some respects.

Mr. TODD. In some respects.

Senator PURCELL. It also enabled you, did it not, to ascertain and determine for yourself whether or not you would proceed under the section that they intended that you could proceed under?

Mr. TODD. No; it did not, because these affidavits, while they claimed to base a charge that false affidavits had been filed in this case, did not show wherein they were false.

Senator PURCELL. Very true; but the charge was made that they were false?

Mr. TODD. Yes, sir.

Senator PURCELL. Now they contended they could be prosecuted under a certain section?

Mr. TODD. Forty-seven hundred and forty-six; yes, sir.

Senator PURCELL. You had sufficient information then from which you could determine whether they could proceed under that section, and you determined that they could not?

Mr. TODD. No; I did not until they had brought in the original papers. I did not determine that until they had brought in the original papers, in response to my request for them.

Senator PURCELL. You had made some progress in looking it up?

Mr. TODD. No; I made no progress. I could not do anything without the original papers, could not even give an opinion.

Mr. BRANDEIS. You got the original papers, did you not?

Mr. TODD. Yes, sir; May 16.

Mr. BRANDEIS. You got them?

Mr. TODD. Yes, sir.

Mr. BRANDEIS. You discussed very fully the possibility of proceeding under one section or another?

Mr. TODD. Yes, sir.

Mr. BRANDEIS. You concluded, upon conference with Mr. Jones, and hearing what he had to say in regard to the one section, in regard to obtaining false affidavits, that was the section you could proceed under?

Mr. TODD. Yes, sir.

Mr. BRANDEIS. You came to the conclusion that the other section of the conspiracy to defraud the United States was one that you could proceed under?

Mr. TODD. Exactly.

Mr. BRANDEIS. And that conclusion that you had reached was the result—aside from your own learning on this subject, was the result—of these matters which had been brought before you by Mr. Glavis and Mr. Jones?

Mr. TODD. It was the result of the examination of the affidavits and the original papers.

Mr. BRANDEIS. Yes, but however modest and humble their part may have been, it was the bringing to you of the facts on which you, in your learning, would exercise judgment and decide what could be done.

Mr. TODD. Yes, sir; just as I told Mr. James, in answer to his question.

Mr. BRANDEIS. But whatever was done that enabled you to render this learned opinion was based upon facts which they laid before you. or papers, wasn't it?

Mr. TODD. I do not term that a learned opinion.

Mr. BRANDEIS. If you do not in modesty call it a learned opinion we will call it opinion without being learned.

Mr. TODD. That is all right.

Mr. JAMES. Mr. Todd, when were these matters to be laid before the grand jury for indictment?

Mr. TODD. The final conference, in which I gave this opinion, Mr. James, was on Sunday, May 17.

The CHAIRMAN. You mean Mr. Jones?

Mr. TODD. I mean Mr. James.

Mr. JAMES. He is calling me James. That is my name.

Mr. TODD. That final conference was on Sunday, May 17, and I dictated the letter which is in the records, but my grand jury met on Tuesday. I had about thirty matters to present, and I told Mr. Jones, and also suggested in the letter, that the matter be presented to the July grand jury in six weeks.

Mr. JAMES. In this statement here the Attorney-General says this: "And these cases must, therefore, be presented." He says before that "that the criminal prosecution will be barred by the statute of limitation after the following October."

Mr. TODD. Yes, sir.

Mr. JAMES (quoting): "During the month of May," and all such original papers and documents were, by direction of the General Land Office, immediately transmitted to him by the Juneau office.

That is a mistake.

Mr. TODD. I do not know just what page you are reading from.

Mr. JAMES. I am reading from pages 562 and 563 of the record, the Attorney-General's opinion to the President.

Mr. TODD. That was Mr. Glavis's letter. That they must be presented during the month of May. That was our last grand jury in Seattle; but in Tacoma, the other division of the district, we had a July grand jury.

Mr. JAMES. The point I am getting at is, if I understand this letter right here of the Attorney-General to the President, he states this: "These cases would have been barred by October and they should

therefore have been presented during the month of May." I think he means by that to the grand jury.

Mr. TODD. Yes, sir.

Mr. JAMES. I say that is a mistake, because you just stated you had so many cases you could not attend to it; that you had about 30 cases.

Mr. TODD. The statement that they must be presented in May is a mistake. They could have been presented to the July grand jury.

Mr. JAMES. The whole statement there—I did not read all—the Attorney-General says:

In this connection it may be pointed out, as an example of Glavis's habitual procrastination, that although, pursuant to his request of April 11, 1908, to forward to him all original papers relating to Alaska coal entries and declaratory statements upon his representation that the statute of limitations would prevent criminal prosecutions after the following October, and the cases must therefore be presented during the month of May, all such original papers and documents were, by direction of the General Land Office, immediately transmitted to him by the Juneau office.

So in conversation with Mr. Glavis you stated to him that owing to the pressure of business in your office, you yourself would not be able to act in May?

Mr. TODD. I said that in a letter to him. It was in the letter of May 16, which is in the record.

Mr. JAMES. So those are the true facts about it being presented in May, that you yourself stated that it could not be done on account of the business you had on hand?

Mr. TODD. That I would rather not do it then; that I could not give the matter the attention it should have.

Mr. BRANDEIS. You say you would rather not do it then, that is not a very accurate statement of what you say in that letter, is it?

Mr. TODD. No; it is not.

Mr. BRANDEIS. Why did you say it if it were not so?

Mr. TODD. That is so; but I say it is not very accurate. I was not giving a statement of what was in the letter.

Mr. BRANDEIS. Let me read you what was in the letter and then let us have your explanation [reading]:

The federal grand jury meets in Seattle May 19, 1908, and as I have about thirty matters to present to that grand jury, including two murder cases, I can not at this time give this matter the attention which it should have.

Is that that you prefer not to—do you not say you can not?

Mr. TODD. That is, that I would prefer not to.

Mr. BRANDEIS. That is what this means, is it?

Mr. TODD. I meant I would prefer not to present a case that I could not give the attention that it should have; that is just what I said.

Mr. BRANDEIS. That is not what you answered Mr. James, is it?

Mr. TODD. I think that is close enough.

Mr. BRANDEIS. Close enough for you, but is it close enough for the truth?

Mr. TODD. I think it is close enough for Mr. James—that was not meant in that way exactly, Mr. James.

Mr. BRANDEIS. Now, Mr. Todd, you volunteered some criticism yourself of Mr. Glavis. You said there was no reason why he should not have attended to this matter at once. Do you not know that he received explicit instructions that he should, on the 2d of May, with-

draw from the prosecution of the Alaska coal matters and devote himself to other business?

Mr. TODD. What date was that?

Mr. BRANDEIS. May the 2d.

Mr. TODD. On May 2?

Mr. BRANDEIS. Yes. You criticised him for that, that he had done nothing in May after the receipt of your letter. Do you not know that that was so?

Mr. TODD. That what is so?

Mr. BRANDEIS. That he received a letter from Commissioner Dennett on May 2, telling him to stop the Alaska investigation?

Mr. TODD. My recollection is that he so testified. I have read it in the record and that is all I know about it.

Mr. BRANDEIS. Did you remember that when you said a little while ago and undertook yourself to criticise him for not doing something promptly?

Mr. TODD. If I had understood it, I would still make the same statement. When I asked that the matter be presented to the July grand jury, he transmitted the papers to the commissioner.

Mr. BRANDEIS. Well, what was Mr. Glavis directed to do in May, do you remember?

Mr. TODD. I do not know.

Mr. BRANDEIS. Do you not remember that the Oregon fraud cases were on and that he was told to give his time to the Oregon fraud cases, cases of land frauds?

Mr. TODD. No; I do not remember it, never heard of it. Portland is not in my district.

Mr. BRANDEIS. So you do not know about that?

Mr. TODD. No; I do not know.

Mr. BRANDEIS. Let me ask you another thing; you have been reading this record, have you not?

Mr. TODD. Yes, sir.

Mr. BRANDEIS. You have been reading Senate document 248?

Mr. TODD. No; I have not read Senate document 248.

Mr. BRANDEIS. Now I will ask you, whether you know, from conferences with Mr. Vertrees, and the others, with whom I understand you have been conferring—

Mr. VERTREES. Do you raise any objection to that?

Mr. BRANDEIS. No. I envy him the opportunity.

Mr. TODD. My recollection is, Mr. Brandeis, that you and I enjoyed a dinner together one night.

Mr. BRANDEIS. We did, and it was very pleasant.

Mr. TODD. Yes; I think so.

Mr. OLMSTED. We envy you both.

Mr. TODD. You might well; the third man paid for it.

Mr. BRANDEIS. Now, Mr. Todd, is it not a fact that this statement of the Attorney-General, in which he has gone out of the way—in which he said that—

in this connection it may be pointed out, as an example of Mr. Glavis's habitual procrastination, that although, pursuant to his request of April 11, 1908, to forward to him all original papers relating to the Alaska coal entries and declaratory statements upon his representation that the statute of limitations would prevent criminal prosecutions after the following October, and that the cases must therefore be presented during the month of May, all such original papers and documents were, by direction of the

Office, immediately transmitted to him by the Juneau office.

I refer to this last part of it [reading]:

No proceeding whatever was taken by him to hurry these criminal prosecutions or to take any steps in connection therewith.

Now, I ask you whether it is not a fact that there is not and was not in the record before the Attorney-General one particle of evidence on the question of whether or not Mr. Glavis had done anything on that at all; whether or not there was in the record anything except the telegram of April 11 and the telegram of April 13 and this letter of May 20 from the receiver and register of the Juneau office, telling him that these papers were transmitted; but of these other facts which have been the subject of this examination of you, there is not a particle of evidence on them, one way or the other, in the record now. Is that not a fact?

Mr. TODD. In the record of the evidence before the Attorney-General?

Mr. BRANDEIS. Yes; in the record of the evidence before the Attorney-General.

Mr. TODD. I do not know what was in the record before the Attorney-General. I never examined it.

Mr. BRANDEIS. Now, Mr. Chairman, on that subject, I will undertake to state that it is a fact, and if I am wrong I should like to have it called to my attention.

Senator SUTHERLAND. Do you undertake to state to the committee what was before the Attorney-General?

Mr. BRANDEIS. Yes, sir. The Attorney-General purports to make a report—

Mr. OLMSTED. Will we not have to determine that from the evidence?

Mr. BRANDEIS. I understand; but possibly I may aid you in that determination.

Mr. OLMSTED. We expect you to.

Mr. BRANDEIS. The chairman asked me, on another subject, what is in the evidence and what is not, and therefore on this subject, which is closely related to it, this evidence has been fully developed; and I want to state right here that with the exception of this April 11 telegram and the April 13 telegram, merely calling for the papers, and the letter of May 20, which introduced this subject, there is nothing whatever in the evidence, and that that statement of the Attorney-General is based on, and is made up from, the evidence without any evidence whatsoever upon which to base it—that is, neither the statements of Mr. Todd or the letters we have put in, or anything in regard to it.

Senator SUTHERLAND. What is there in the record before us to show what was before the Attorney-General?

Mr. BRANDEIS. The whole record is there.

Senator SUTHERLAND. Yes; but that is not a very definite answer to my question.

Mr. BRANDEIS. I told what is there.

Mr. JAMES. He means where can we get at it in this document.

Senator SUTHERLAND. Where do you find in the record anything that shows exactly what was before the Attorney-General? That is what I am asking you.

Mr. BRANDEIS. Here is the whole statement; I will read it.

Senator SUTHERLAND. You need not read it; just call my attention to it. What page of the record is it?

Mr. BRANDEIS. You will find it, Senator Sutherland, on pages 489 and 490. The Attorney-General undertakes to say he has made a summary "based upon the following statements and documents that have been submitted to you"—the President.

Mr. OLMSTED. Then you undertake to say that there is nothing in this document that bears out that statement?

Mr. BRANDEIS. Not only nothing that bears out the statement, but there is nothing that tends to prove one thing or the other.

Mr. OLMSTED. Nothing on the subject, you say?

Mr. BRANDEIS. There is nothing on the subject, at all. If there was something there, a man might have an opinion, there might be a difference of opinion on the evidence, but there is no evidence whatever on that subject.

Mr. McCALL. Do you think the "you" referred to means the President?

Mr. BRANDEIS. "You," as I understand it, is the President.

Mr. McCALL. "The following statement and documents have been submitted to you"——

Mr. BRANDEIS. Yes, sir; I think it appears earlier that the President had requested him——

Mr. McCALL. There is nothing said about the President before that.

Mr. BRANDEIS. It is addressed to the President.

Mr. MADISON. Mr. Wickersham says: "At your request I have undertaken to summarize contents of these papers and their effect upon the charges made by Mr. Glavis."

Mr. BRANDEIS. Mr. Vertrees, will you now give me the Wilson Coal Company papers and exhibits?

Mr. TODD. I know what they are.

Mr. VERTREES. I have not opened them; here are all the papers.

Mr. BRANDEIS. Perhaps Mr. Todd would know the exhibits as well as anybody.

Mr. GRAHAM. At the end of that summary of the Attorney-General the President is addressed.

Mr. BRANDEIS. Mr. Todd, in these Wilson Coal Company papers I understood you to testify that there were certain deeds put in escrow, was that correct?

Mr. TODD. That is correct.

Mr. BRANDEIS. Under what agreement?

Mr. TODD. Under the agreement between Watson Allen and the two Wilson girls.

Mr. BRANDEIS. What was the nature of that agreement?

Mr. TODD. The nature of that agreement as testified to differently by the different parties, but it was the contention of the Government and the court found in its opinion that these deeds were put in escrow in Judge Ballinger's safe until R. A. Wilson, the father of the girls, could obtain title to the balance of the thousand and forty acres for Watson Allen. The girls testified differently, but that is what the Government contended and what the court found in its opinion.

Mr. BRANDEIS. That is what the court found. You wrote a brief in that case?

Mr. TODD. I wrote the brief in that case.

Mr. BRANDEIS. And on page 16 of your brief, paragraph 28, I find [reading]:

That patents were subsequently issued to Helen Pack Wilson and Virgil Wilson. Virgil Wilson, on March 5, the day after payment was made to the Government, deeded to Minn Marie Wilson, daughter of R. A. Wilson, and on the 29th day of August, 1902, Helen Pack Wilson and Minn Marie Wilson deeded to Watson Allen, the deed being put in escrow subject to his agreement with R. A. Wilson that title should be obtained to the balance of the 1,040 acres. These deeds were not recorded until September 17, 1903, and were then recorded by Watson Allen at the request of George B. Wilson. The escrow agreement was never carried out, and Watson Allen, in February, 1904, deeded this land back to R. A. Wilson, and these deeds were not recorded until November 25, 1904. (Complainant's Exhibits 42 to 50—testimony of Watson Allen, pp. 390 to 393.)

That statement summarizes the facts, as you understand it?

Mr. TODD. Those are the facts, as I contended, and as, I think, the record shows.

Mr. BRANDEIS. And those facts were sustained by the court?

Mr. TODD. I do not know whether the court sustained all of them or not. It is not necessary for the court to sustain all of them. That was only one in the chain of evidence.

Mr. BRANDEIS. The contention made by you as to these facts was directly contrary to that testified to by one or both of the Misses Wilson?

Mr. TODD. It was.

Mr. BRANDEIS. And the court's finding you also understand to be directly contrary to their testimony; is that not true?

Mr. TODD. I will read what the court's finding was.

Mr. BRANDEIS. I think we have it in the record. I would like to know your judgment of it, as you have been testifying as to what was in the case.

Mr. TODD. This is the court's finding, and it is correct under the record:

The two daughters made deeds conveying the patented 320 acres to Mr. Allen, with the understanding that the deeds should remain in escrow until the title should be secured to the others.

Mr. BRANDEIS. The testimony of those daughters was a subject of a great deal of criticism in the case by you, was it not?

Mr. TODD. I did not criticise it a great deal in the brief, as I remember; I did not think it necessary.

Mr. BRANDEIS. Let me see whether you did not criticise it.

Mr. TODD. I criticised it some.

Mr. BRANDEIS. What you might call a good deal. In speaking of the claimants that the Wilson Coal Company was a bona fide purchaser without notice, you say, do you not, on page 27 of the brief:

Its—

Namely, the company's—

effort to appear as an innocent purchaser without notice is almost as absurd as the testimony of the two Wilson girls to show that they never heard of the Sterling Coal Company, after both of them had signed deeds in its behalf, laughed about the riches they were to obtain through it, and one of them had in her own handwriting made out the bill of her father to the Sterling Coal Company of expenses he had incurred for it.

Do you call that criticism?

Mr. TODD. No; I do not call it a great deal of criticism.

Mr. BRANDEIS. Does it not involve a very definite charge of perjury?

Mr. TODD. Yes; it does, but what I meant was as to the only statement in the brief about their testimony.

Mr. BRANDEIS. But it is a statement that directly charges, as any one understanding the case would know, involving having committed deliberate perjury, would it not?

Mr. TODD. Exactly; but you are raising the point on the meaning of the words "a great deal." I meant a great amount of space in the brief.

Mr. BRANDEIS. It was multum in parvo, was it?

Mr. TODD. Exactly; it was stated correctly.

Mr. BRANDEIS. Mr. Todd, you have said that Mr. Ballinger had not drawn the escrow agreement.

Mr. TODD. There was no escrow agreement drawn.

Mr. BRANDEIS. That is, it was a verbal agreement.

Mr. TODD. It was a verbal agreement.

Mr. BRANDEIS. And that is all that you wanted to say, or wanted the committee to understand, in the testimony you gave in response to Mr. Vertrees's question, was it not?

Mr. TODD. I do not understand your question, Mr. Brandeis. I answered the question, and I did not have any idea of what I wanted the committee to understand. I just stated the facts as I know them.

Mr. BRANDEIS. It is a fact, is it not, that Mr. Ballinger did have a definite part in this transaction, which is evidenced by writing?

Mr. TODD. He drew the deeds; yes, sir.

Mr. BRANDEIS. He drew the deeds, and he is one of the witnesses to the deeds, is he not?

Mr. TODD. Yes, sir.

Mr. BRANDEIS. I would like to introduce in evidence, specifically at this point, the two deeds bearing Mr. Ballinger's signature as a witness.

The CHAIRMAN. They are admitted.

Senator SUTHERLAND. Let me ask you a question, Mr. Brandeis. The only fact that you desire to prove by that is that he drew them and signed as a witness?

Mr. BRANDEIS. Yes, sir. These deeds are very short and it would take less time to have them appear than to discuss it.

Senator SUTHERLAND. They are both in the record now.

Mr. MCCALL. What is the date of the deed?

Mr. TODD. August, 1902.

Mr. BRANDEIS. They showed the acknowledgment and all. They are dated August 29, 1902. They both bear the same date, do they not, Mr. Todd?

Mr. TODD. Yes; they both bear the same date.

(The deeds referred to are as follows:)

This indenture, made this twenty-ninth day of August, in the year of our Lord, one thousand nine hundred and two between Minn Marie Wilson, of Seattle, Washington, unmarried, the party of the first part, and Watson Allen, the party of the second part,

Witnesseth that the said party of the first part, for and in consideration of the sum of sixty-four hundred dollars, gold coin of the United States, to her in hand paid by the said party of the second part the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell, convey, and confirm unto the said party of the second part and to his heirs and assigns, the following described tract, lot, or parcel of land situate, lying, and being in the county of Lewis, State of Washington, and particularly bounded and described as follows, to wit:

The southwest quarter (SW. ¼) of section ten (10) township fourteen (14) north of range one (1) west Willamette meridian, together with the appurtenances, to have and to hold the said premises, with the appurtenances, unto said party of the second part and to his heirs and assigns forever.

And the said party of the first part, her heirs, executors, and administrators does by these presents covenant, grant, and agree to and with the said party of the second part, his heirs and assigns, that she, the said party of the first part, her heirs, executors, and administrators, all and singular, the premises hereinabove conveyed, described, and granted or mentioned, with the appurtenances, unto the said party of the second part his heirs, and assigns, and against all and every person or persons whomsoever lawfully claiming or to claim the same or any part thereof shall and will warrant and forever defend.

In witness whereof the said party of the first part has hereunto set her hand and seal the day and year first above written.

MINN MARIE WILSON. [SEAL.]

Signed, sealed, and delivered in the presence of—

R. A. BALLINGER.
F. E. BRIGHTMAN.

STATE OF WASHINGTON, *County of King, ss:*

This is to certify that on this 29th day of August, A. D. 1902, before me, the undersigned, a notary public in and for the State of Washington, duly commissioned and sworn, personally came Minn Marie Wilson, a single person, to me known to be the individual named in and who executed the within instrument, and acknowledged to me that she signed and sealed the same as her free and voluntary act and deed for the uses and purposes therein mentioned.

[SEAL.]

F. E. BRIGHTMAN,
*Notary Public in and for the State of Washington,
Residing at Seattle, Wash.*

STATE OF WASHINGTON, *County of Lewis, ss:*

I certify that the within deed was filed for record at request of Watson Allen on the 17th day of September, 1903, at 20 minutes past 8 o'clock a. m.

A. SCHOOLEY,
Auditor, Lewis County, Wash.

STATE OF WASHINGTON, *County of Lewis, ss:*

I, J. E. Stearns, auditor of Lewis County, State of Washington, do hereby certify the foregoing to be a true copy of a certain instrument of writing as the same appears of record in my office on page 617 of deed record No. 51.

In witness whereof I hereby set my hand and affix my official seal this 27th day of May, 1907.

[SEAL.]

J. E. STEARNS,
Auditor of Lewis County, Wash.

This indenture, made this twenty-ninth day of August, in the year of our Lord one thousand nine hundred and two, between Helen Pack Wilson, of Seattle, Washington, unmarried, party of the first part, and Watson Allen, of Seattle, Washington, party of the second part.

Witnesseth that the said party of the first part, for and in consideration of the sum of sixty-four hundred dollars, gold coin of the United States, to her in hand paid by the said party of the second part the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell, convey, and confirm unto the said party of the second part, and to his heirs and assigns, the following-described tract, lot, or parcel of land situate, lying, and being in the county of Lewis, State of Washington, and particularly bounded and described as follows, to wit:

The northwest quarter (NW. ¼) of section ten (10), township fourteen (14) north, of range one (1) west of Willamette meridian, together with the appurtenances, to have and to hold the said premises, with the appurtenances, unto said party of the second part, and to his heirs and assigns forever.

And the said party of the first part, her heirs, executors, and administrators, does by these presents covenant, grant, and agree to and with the said party of the second part, his heirs and assigns, that she, the said party of the first part, her heirs, executors, and administrators, all and singular, the premises hereinabove conveyed, described, and granted, or mentioned, with the appurtenances, unto the said party of the second part, his heirs and assigns, and against all and every person or persons whomsoever lawfully

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claiming or to claim the same or any part thereof shall and will warrant and forever defend.

In witness whereof the said party of the first part has hereunto set her hand and seal the day and year first above written.

HELEN PACK WILSON. [SEAL.]

Signed, sealed, and delivered in presence of—

R. A. BALLINGER.

F. E. BRIGHTMAN.

STATE OF WASHINGTON, *County of King*, ss:

This is to certify that on this 29th day of August, A. D. 1902, before me, the undersigned, a notary public in and for the State of Washington, duly commissioned and sworn, personally came Helen Pack Wilson, a single person, to me known to be the individual described in and who executed the within instrument, and acknowledged to me that she signed and sealed the same as her free and voluntary act and deed for the uses and purposes therein mentioned.

[SEAL.]

F. E. BRIGHTMAN,
*Notary Public in and for the State of Washington,
Residing at Seattle, Wash.*

STATE OF WASHINGTON, *County of Lewis*, ss:

I certify that the within deed was filed for record at request of Watson Allen on the 17th day of September, 1903, at 15 minutes past 8 o'clock a. m.

A. SCHOOLEY,
Auditor, Lewis County, Wash.

STATE OF WASHINGTON, *County of Lewis*, ss:

I, J. E. Stearns, auditor of Lewis County, State of Washington, do hereby certify the foregoing to be a true copy of a certain instrument of writing as the same appears of record in my office, on page 616 of deed record No. 51.

In witness whereof I hereby set my hand and affix my official seal this 27th day of May, 1907.

J. E. STEARNS,
Auditor of Lewis County, Wash.

The CHAIRMAN. There was no written escrow agreement, was there?

Mr. TODD. As I read the record there was no written escrow agreement; just an understanding between Watson Allen and the two Wilson girls.

Mr. BRANDEIS. In discussing Judge Hanford—who, of course, it is very painful for you as an attorney of his court to discuss at all—you referred, in answer to Mr. Vertrees's question, to the fact that Judge Hanford had, as I understood from you, been conspicuous in objecting; at the conservation meeting in Seattle, to the so-called Pinchot policies of conservation. Is that correct?

Mr. TODD. No, sir; it was not at the conservation meeting. It was at some meeting at a fair. It was not the conservation meeting.

Mr. BRANDEIS. Was it not at the congress?

Mr. TODD. No, sir; it was Yakima day at Seattle.

Mr. BRANDEIS. I beg your pardon—

Mr. TODD. The one to which I refer. I do not know what he did at the conservation congress.

Mr. BRANDEIS. I have here the record of that congress, in which it appears that Judge Hanford introduced a minority report on the subject of waterpower.

Mr. TODD. That was not the matter to which I had reference. I am not familiar with that. I had reference to his speech at the Seattle fair last September on what is called Yakima day.

Mr. BRANDEIS. You do recall, do you not, that at the end of August, 1909, there was a conservation congress held, as I understand it, in connection with the fair?

Mr. TODD. I think that was at Spokane.

Mr. BRANDEIS. No, sir; there was an irrigation congress at Spokane, and this conservation congress, which dealt with the subject of water power, was at Seattle.

Mr. TODD. I do not know about that——

Mr. BRANDEIS. And there was a committee which rendered a report on the conservation of water power, and Judge Hanford was, was he not, the only member who made a report against that plan of conservation?

Mr. TODD. I do not recollect. I remember that he did join in some minority report or made it alone, I do not remember which.

Mr. BRANDEIS. In joining in it he was the minority, was he not?

Mr. TODD. I do not recollect how large the committee was.

Mr. BRANDEIS. And do you not recall that ex-Governor Pardee, of California, made a very earnest address somewhat attacking Judge Hanford's views on this subject?

Mr. TODD. I recollect that there were several congresses out there last summer, and there was a great deal of altercation in the congresses, but I did not attend them and only read the newspaper accounts in regard to them.

Mr. BRANDEIS. Now Judge Hanford has shown in some way other than his minority report and this address that you have referred to, his lack of harmony and sympathy with what might be called the Pinchot-Glavis ideas of conservation, has he not?

Mr. TODD. I do not know what Mr. Glavis's ideas of conservation are, but he showed lack of harmony with the Pinchot idea of conservation.

Mr. BRANDEIS. But he could be said—putting it in another way—to have showed an extraordinary desire himself to secure lands from the Federal Government, could he not?

Mr. TODD. Not that I know of.

Mr. BRANDEIS. Are you not familiar, and have you not, in reading the record of this case, been interested to read the correspondence between Mr. Ballinger while he was out of office with Commissioner Dennett, while he held that position between March 4, 1908, and March 4, 1909?

Mr. TODD. I have not read that; no, sir. I have not read many of the exhibits, Mr. Brandeis.

Mr. BRANDEIS. I wanted to show whether some of the facts that appear by those exhibits did not come to your attention in connection with Judge Hanford's activities in the acquisition of the public lands. By the way, Judge Hanford is interested in the Hanford Irrigation and Power Company, is he not?

Mr. TODD. I so understand. They developed a power plant on Priest River rapids, on the Columbia River.

Mr. BRANDEIS. And Judge Hanford is interested in that; do you not know that?

Mr. TODD. Yes, sir.

Mr. BRANDEIS. I call your attention on page 1597 of the testimony to the letter of Judge Ballinger to Mr. Dennett of March 18, 1908, just a fortnight after he retired from the commissionership, as follows:

[Personal.]

SEATTLE, WASH., March 18, 1908.

MY DEAR SIR: In a conversation just had with Judge C. H. Hanford I learn that a serious difficulty exists respecting the rights of the Hanford Irrigation and Power Company over their power site on the Columbia River, in section 2, township 13,

range 23 east. It seems to result from the fact that the surveys on that side of the river were probably paper surveys, and hence no monuments or survey stakes appear to be found. It is the general supposition that they were never set. From a protraction of the survey, from known corners on the other side of the river, certain fractions in section 2, which the Hanford Irrigation and Power Company supposed it owned, and upon which it built its power house, appear now to fall upon the south half of southwest quarter of section 2, and there is no such river front and fractions as the field notes seem to call for outside of this south half of southwest quarter. One McCurley has made application to scrip this eighty, and, as I understand, is undertaking to hold up the Hanford Irrigation and Power Company. The application of McCurley has not yet passed to patent, as I am informed.

Pending a full and careful investigation of the matter and a determination of the riparian rights through the patented lands in section 2, which appear to lie from the record between this south half of the southwest quarter and the river bank, I feel that the application of McCurley should not go to patent. I would appreciate it if you would advise me as to the status of the McCurley application and give us a reasonable time in which to present the full situation in case it should be necessary. I do not wish at this time to file a formal protest against the McCurley application.

Please give me the status of lot 3, section 2, township 13 north, range 23 E., W. M. We are anxious to have patent issue as early as possible on this tract. If a showing is necessary to expedite it, please let me know.

Yours, very truly,

R. A. BALLINGER.

HON. FRED DENNETT,

Commissioner of the General Land Office, Washington, D. C.

Do you know of that special tract that Judge Hanford was interested in?

MR. TODD. The one referred to in the letter; no, sir.

MR. BRANDEIS. Now can you tell what this refers to, "we are anxious to have patents issue as early as possible on this tract." Was Mr. Ballinger interested in that company?

MR. TODD. Not that I know of; I never heard that he was.

MR. OLMSTED. What is the date of that letter?

MR. BRANDEIS. March 18, 1908.

SENATOR PURCELL. Who is it written to?

MR. BRANDEIS. It is written to Fred Dennett, Commissioner of the General Land Office. I may say that it appears from the letter on the same page that there is a letter of March 14 written by Mr. Ballinger to "My dear Fred"—Fred Dennett.

SENATOR PURCELL. What page is that?

MR. BRANDEIS. The same page, 1597—they had just reached Seattle on the Tuesday previous. The answers to those letters—the further action in regard to the matter—appear, Senator Purcell, on the following pages—pages 1598–1599. Now, that is not the only land matter that Judge Hanford was interested in in which he called the attention, or called the aid of Mr. Ballinger to, and through Mr. Ballinger, of Commissioner Dennett to, is it?

MR. TODD. I have not the least idea. That Hanford Irrigation Company is the only company of the kind, or the only land that I know of that Judge Hanford is interested in.

MR. BRANDEIS. You think it is?

MR. TODD. That is all that I know anything about.

MR. BRANDEIS. I call your attention to another matter appearing on page 1606, being another letter of Mr. Ballinger to Commissioner Dennett, dated May 22, 1908, as follows:

[Law offices Ballinger, Ronald, Battle & Tennant, Rooms 901-906 Alaska Building, Seattle, Wash.]

MAY 22, 1908.

HON. FRED DENNETT,

Commissioner of the General Land Office, Washington, D. C.

MY DEAR FRED: Judge Hanford yesterday spoke to me respecting the importance of securing title to certain fractions of land in sec. 6, T. 13 N., range 26 E., being lots 4 and 5, and asked me to write you respecting the hastening of the issuance of patent therefor to the Northern Pacific Railway Company so far as possible. I inclose herewith letter received from Mr. Walthew, secretary of the company, giving me the facts as a basis of writing you. I wish you would have this matter looked into at once, and if it is consistent with the condition of the record for the lots to be patented, would appreciate immediate action. In any event please let me know the condition of these lots in so far as their status is concerned, and the probability of issuance of patent at an early date.

I hope to be able to run down to Washington from Chicago to see you after the convention is over and will anticipate meeting you with much pleasure.

With best regards, I remain,

Yours, sincerely,

R. A. BALLINGER.

Now, Mr. Todd, do you remember that particular lot?

MR. TODD. No, sir; I do not remember about that. Mr. Walthew is the secretary of the Hanford Irrigation Company, and as I remember the Hanford Irrigation Company secured part of the land through the Northern Pacific strip and part of it is Northern Pacific Railroad land.

MR. BRANDEIS. Well, there are two other applications in which Judge Hanford is interested, apparently in this short period; another one on May 29. It is on page 1607.

SENATOR SUTHERLAND. Mr. Brandeis, do you not think that you are taking up the time of the committee unnecessarily to read these letters to this witness? He knows nothing about them and can not know anything about them.

MR. BRANDEIS. He does know something about them, Senator. He has just called our attention to the fact that the secretary was Mr. Walthew.

SENATOR SUTHERLAND. But the witness knows nothing about these letters, and it does seem to me—while I do not want to interfere with you—unnecessary to take up the time of the committee by reading those letters to the witness.

MR. BRANDEIS. I think, Senator, that it is very important to call attention to the intimate relation of Judge Hanford.

SENATOR SUTHERLAND. You may be quite right in calling the committee's attention to it, but there is no necessity of calling the witness's attention to it and thereby taking up our time unnecessarily.

MR. BRANDEIS. I certainly can limit this matter by just calling specific attention, without reading the letters, to the letter of May 29, 1908, on page 1607 of the record.

MR. MADISON. Just state the substance of it, what particular fact you want us to know.

MR. BRANDEIS. There is another fact that this irrigation company in which Judge Hanford is interested is again calling for some specific information from the Land Department in that letter of May 29, and in another letter addressed to Mr. Dennett—both of them—that of August 21, which appears on page 1608, and again on October 2, 1908, which appears on page 1609. I desire specifically to have the committee know in each instance the action taken by Commissioner Dennett on those applications.

Mr. OLMSTED. That is all right for us to know it, and for you to call our attention to it, but what has this witness got to do with it?

Mr. BRANDEIS. I want to ask this witness some more questions.

Mr. OLMSTED. Very well.

Mr. BRANDEIS. Now, Mr. Todd, having in mind these various matters relating to the Hanford Irrigation and Power Company, which Mr. Ballinger calls attention to, and requests from Mr. Dennett, and the specific statement in the earliest letter of Mr. Ballinger "we desire to have the patent issue," I would like to have you state whether or not, according to your best information as you have stated some other things, Mr. Ballinger was interested in that property?

Mr. TODD. I never heard that he was, and I do not think that he was.

Mr. BRANDEIS. You mean, never interested in it as a stockholder? Is that what you wish to say?

Mr. TODD. That is what I wish to indicate.

Mr. BRANDEIS. In what capacity was he acting here?

Mr. TODD. I do not know.

Mr. BRANDEIS. What are his relations to Judge Hanford?

Mr. TODD. Friendly.

Mr. BRANDEIS. How friendly?

Mr. TODD. I do not know how friendly.

Mr. BRANDEIS. Well, tell us to the best of your knowledge what his relations to Judge Hanford are.

Mr. TODD. Well, like other attorneys at the head of the bar in the city of Seattle, I think he is friendly to Judge Hanford. That is all I can say.

Mr. BRANDEIS. Is that all the relationship that you know about, or have heard anything about?

Mr. TODD. That is all I know. That is all that I have heard about or know anything about.

Mr. BRANDEIS. That is all.

The CHAIRMAN. Mr. Vertrees, do you desire to ask any questions?

Mr. VERTREES. I just desire to ask a question or two.

Senator FLETCHER. Mr. Vertrees, will you allow me just one question before you begin. Mr. Todd, do you remember whether Commissioner Dennett came out to Seattle between May and July, 1908?

Mr. TODD. No, sir; I do not. I only know on information and belief when he came to Portland. That is what I have heard since I have been here. I did not meet him when he was out there at that time.

Senator FLETCHER. You did not meet him?

Mr. TODD. And I do not know of my own knowledge when he came out.

Senator FLETCHER. Between May and July?

Mr. TODD. No, sir.

Senator FLETCHER. He had no conferences with you?

Mr. TODD. None at all.

Senator FLETCHER. If he determined not to prosecute anyone criminally on account of those affidavits, he did not make that known to you prior to July, 1908, or the grand jury?

Mr. TODD. No, sir.

Mr. BRANDEIS. Prior to July, 1909, I believe was the date you heard of it. The next occasion you heard of this was in 1909, was it?

Mr. TODD. The only time I ever heard of it afterwards was when I asked Mr. Jones when he was in Seattle about it.

Mr. BRANDEIS. That was in the fall of 1909, was it?

Mr. TODD. Yes, sir.

Mr. BRANDEIS. You heard nothing between May, 1908, and the fall of 1909?

Mr. TODD. Nothing at all.

Mr. BRANDEIS. When, according to the information you have received, was Mr. Dennett there in the summer of 1908?

Mr. TODD. The middle of July.

Mr. BRANDEIS. The middle of July?

Mr. TODD. Yes, sir.

Senator PURCELL. Mr. Todd, were you in charge all the time of the litigation that was brought in the Watson Allen cases?

Mr. TODD. Of course, technically I am in charge of every case in the office, but when I came into the office Mr. Hoyt had been handling the case for the seven or eight months that he had been in the office, and then I got a list of the cases and referred to it. He had charge of the taking of the testimony and was responsible to me, and I was responsible to the department.

Senator PURCELL. Then there was a time when these cases were handled by Mr. Hoyt?

Mr. TODD. Yes, sir; they were handled——

Senator PURCELL. And you had but very little, if anything, to do with them?

Mr. TODD. I had very little. I knew that the testimony was being taken, but I was not present at the time the testimony was taken.

Senator PURCELL. Do you swear that there was no arrangement made by which the name of Mr. Ballinger, or the members of his firm, was purposely left out of that record?

Mr. TODD. I can only again answer on information. I asked the stenographer who took the testimony, and he told me that he transcribed the testimony exactly as it was given.

Senator PURCELL. But you have no personal knowledge of it yourself?

Mr. TODD. No, sir; not at all.

Senator PURCELL. And your testimony to the effect that there was no such agreement was based on what others had told you?

Mr. TODD. Yes, sir; on what others had told me, and the fact that his name does appear in the record a great many times.

Senator PURCELL. But you have no personal knowledge of it yourself?

Mr. TODD. No, sir; none at all. I never heard anything about any change being made until last fall, or about any suggestion that any change was made.

Mr. OLMSTED. Did you or not state it from your own personal knowledge, when you stated a moment ago that his name does appear in the record?

Mr. TODD. I said that from my own personal knowledge. It was necessary for me to read the whole record in order to prepare the brief and argue the case.

Mr. OLMSTED. That is all right for us to know it, and for you to call our attention to it, but what has this witness got to do with it?

Mr. BRANDEIS. I want to ask this witness some more questions.

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Mr. TODD. That is all I know. That is all that I have heard about or know anything about.

Mr. BRANDEIS. That is all.

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Mr. OLMSTED. Did you or not state it from your own personal knowledge, when you stated a moment ago that his name does appear in the record?

Mr. TODD. I said that from my own personal knowledge. It was necessary for me to read the whole record in order to prepare the brief and argue the case.

Senator PURCELL. Did you read the record with a view of ascertaining this fact or not?

Mr. TODD. I did, when it was called to my attention, and it was suggested that there might be a change.

Senator PURCELL. And you did read the record with that purpose?

Mr. TODD. Yes, sir.

Senator PURCELL. And if the arrangement was made, as Mr. Hoyt and Mr. Glavis have testified, it would not appear in the record?

Mr. TODD. Not at all.

The CHAIRMAN. Does Mr. Ballinger's name appear in the record?

Mr. TODD. A great number of times.

Mr. MADISON. Does it appear with reference to this alleged escrow agreement?

Mr. TODD. Yes, sir; that is, it does during that transaction.

Mr. GRAHAM. Mr. Todd, there were at least two copies of the evidence made, were there not?

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Mr. VERTREES. Only one notation.

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Mr. GRAHAM. That is the one that Mr. Hoyt had before him when he testified, to which he referred.

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Mr. GRAHAM. About matters clearly, as you saw it, which he had not worked up. Was that the thought that you wanted to convey?

Mr. TODD. That was the thought that I wanted to convey.

Mr. GRAHAM. Did you at that time make any written report to any of the government officers about that fact?

Mr. TODD. No, sir.

Mr. GRAHAM. Did you report it at all?

Mr. TODD. No, sir.

Mr. GRAHAM. Had he been associated with you in any trials for the Government?

Mr. TODD. No, sir. April 21 was the first time I ever met him; that is the first time I recollect. Mr. Glavis introduced him to me at that time.

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Mr. TODD. It would be based partly on my personal knowledge and partly upon reading these daily reports that have been put in evidence here.

Mr. GRAHAM. The only part of it, on your personal knowledge, I believe, is what relates to yourself personally?

Mr. TODD. Which relates to his conferences with me.

Mr. GRAHAM. The rest of it is stated merely on belief?

Mr. TODD. That is correct.

Mr. BRANDEIS. Mr. Todd, do you wish in anything that you have stated here and testified to to contradict the statement of Mr. Hoyt, the attorney-general of Porto Rico?

Mr. TODD. None at all—none that I know of.

Mr. BRANDEIS. You have read his testimony, have you?

Mr. TODD. I did not read his testimony carefully at all.

Mr. BRANDEIS. You have discussed this matter with him many times since, have you not?

Mr. TODD. No, sir; Mr. Hoyt and I, while we have been associated together a good deal since we have been here, have not talked much about this case.

Mr. BRANDEIS. You have not purported to say anything or testify in any way to any agreement which was made between Mr. Hoyt and the counsel on the other side in regard to leaving out?

Mr. TODD. No, sir; I know nothing of that.

Mr. BRANDEIS. All you know is what anyone would know from an inspection of the papers themselves?

Mr. TODD. Except that I sought out the stenographer who took the testimony and asked him.

Mr. BRANDEIS. But you have the paper itself—the record is here.

Mr. TODD. Yes, sir.

Mr. BRANDEIS. Now, this copy of the record which Mr. Hoyt testified about came from your office?

Mr. TODD. Yes, sir.

Mr. BRANDEIS. How did it get here?

Mr. TODD. It came down by Judge Battle. I gave it to Judge Battle, and I understand that he brought it down.

Mr. BRANDEIS. Judge Battle is not an official of the Government in any way, is he?

Mr. TODD. No, sir.

Mr. BRANDEIS. Why did you send it by Judge Battle?

Mr. TODD. Because he was coming down here, and I called his attention to these interlineations and told him he might as well bring

Mr. OLMSTED. That is all right for us to know it, and for you to call our attention to it, but what has this witness got to do with it?

Mr. BRANDEIS. I want to ask this witness some more questions.

Mr. OLMSTED. Very well.

Mr. BRANDEIS. Now, Mr. Todd, having in mind these various matters relating to the Hanford Irrigation and Power Company, which Mr. Ballinger calls attention to, and requests from Mr. Dennett, and the specific statement in the earliest letter of Mr. Ballinger "we desire to have the patent issue," I would like to have you state whether or not, according to your best information as you have stated some other things, Mr. Ballinger was interested in that property?

Mr. TODD. I never heard that he was, and I do not think that he was.

Mr. BRANDEIS. You mean, never interested in it as a stockholder? Is that what you wish to say?

Mr. TODD. That is what I wish to indicate.

Mr. BRANDEIS. In what capacity was he acting here?

Mr. TODD. I do not know.

Mr. BRANDEIS. What are his relations to Judge Hanford?

Mr. TODD. Friendly.

Mr. BRANDEIS. How friendly?

Mr. TODD. I do not know how friendly.

Mr. BRANDEIS. Well, tell us to the best of your knowledge what his relations to Judge Hanford are.

Mr. TODD. Well, like other attorneys at the head of the bar in the city of Seattle, I think he is friendly to Judge Hanford. That is all I can say.

Mr. BRANDEIS. Is that all the relationship that you know about or have heard anything about?

Mr. TODD. That is all I know. That is all that I have heard about or know anything about.

Mr. BRANDEIS. That is all.

The CHAIRMAN. Mr. Vertrees, do you desire to ask any questions?

Mr. VERTREES. I just desire to ask a question or two.

Senator FLETCHER. Mr. Vertrees, will you allow me just one question before you begin. Mr. Todd, do you remember whether Commissioner Dennett came out to Seattle between May and July, 1908?

Mr. TODD. No, sir; I do not. I only know on information and belief when he came to Portland. That is what I have heard since I have been here. I did not meet him when he was out there at that time.

Senator FLETCHER. You did not meet him?

Mr. TODD. And I do not know of my own knowledge when he came out.

Senator FLETCHER. Between May and July?

Mr. TODD. No, sir.

Senator FLETCHER. He had no conferences with you?

Mr. TODD. None at all.

Senator FLETCHER. If he determined not to prosecute anyone criminally on account of those affidavits, he did not make that known to you prior to July, 1908, or the grand jury?

Mr. TODD. No, sir.

Mr. BRANDEIS. Prior to July, 1909, I believe was the date you heard of it. The next occasion you heard of this was in 1909, was it?

Mr. TODD. The only time I ever heard of it afterwards was when I asked Mr. Jones when he was in Seattle about it.

Mr. BRANDEIS. That was in the fall of 1909, was it?

Mr. TODD. Yes, sir.

Mr. BRANDEIS. You heard nothing between May, 1908, and the fall of 1909?

Mr. TODD. Nothing at all.

Mr. BRANDEIS. When, according to the information you have received, was Mr. Dennett there in the summer of 1908?

Mr. TODD. The middle of July.

Mr. BRANDEIS. The middle of July?

Mr. TODD. Yes, sir.

Senator PURCELL. Mr. Todd, were you in charge all the time of the litigation that was brought in the Watson Allen cases?

Mr. TODD. Of course, technically I am in charge of every case in the office, but when I came into the office Mr. Hoyt had been handling the case for the seven or eight months that he had been in the office, and then I got a list of the cases and referred to it. He had charge of the taking of the testimony and was responsible to me, and I was responsible to the department.

Senator PURCELL. Then there was a time when these cases were handled by Mr. Hoyt?

Mr. TODD. Yes, sir; they were handled——

Senator PURCELL. And you had but very little, if anything, to do with them?

Mr. TODD. I had very little. I knew that the testimony was being taken, but I was not present at the time the testimony was taken.

Senator PURCELL. Do you swear that there was no arrangement made by which the name of Mr. Ballinger, or the members of his firm, was purposely left out of that record?

Mr. TODD. I can only again answer on information. I asked the stenographer who took the testimony, and he told me that he transcribed the testimony exactly as it was given.

Senator PURCELL. But you have no personal knowledge of it yourself?

Mr. TODD. No, sir; not at all.

Senator PURCELL. And your testimony to the effect that there was no such agreement was based on what others had told you?

Mr. TODD. Yes, sir; on what others had told me, and the fact that his name does appear in the record a great many times.

Senator PURCELL. But you have no personal knowledge of it yourself?

Mr. TODD. No, sir; none at all. I never heard anything about any change being made until last fall, or about any suggestion that any change was made.

Mr. OLMSTED. Did you or not state it from your own personal knowledge, when you stated a moment ago that his name does appear in the record?

Mr. TODD. I said that from my own personal knowledge. It was necessary for me to read the whole record in order to prepare the brief and argue the case.

Senator PURCELL. Did you read the record with a view of ascertaining this fact or not?

Mr. TODD. I did, when it was called to my attention, and it was suggested that there might be a change.

Senator PURCELL. And you did read the record with that purpose?

Mr. TODD. Yes, sir.

Senator PURCELL. And if the arrangement was made, as Mr. Hoyt and Mr. Glavis have testified, it would not appear in the record?

Mr. TODD. Not at all.

The CHAIRMAN. Does Mr. Ballinger's name appear in the record?

Mr. TODD. A great number of times.

Mr. MADISON. Does it appear with reference to this alleged escrow agreement?

Mr. TODD. Yes, sir; that is, it does during that transaction.

Mr. GRAHAM. Mr. Todd, there were at least two copies of the evidence made, were there not?

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Mr. BRANDEIS. Judge Battle is not an official of the Government in any way, is he?

Mr. TODD. No, sir.

Mr. BRANDEIS. Why did you send it by Judge Battle?

Mr. TODD. Because he was coming down here, and I called his attention to these interlineations and told him he might as well bring

it down here, so that it could be submitted. I did not want to send the original record, of course.

Mr. BRANDEIS. It is an official record, is it?

Mr. TODD. I do not so consider it—that is, after the case is closed. It was not certified; it was not filed; it was just in my office as part of the original record. It might be an official record in this way—that I would not have any right to dispose of it.

Mr. GRAHAM. It is a court file?

Mr. TODD. No, sir; it was not a court file. It was my copy of the testimony.

Mr. BRANDEIS. Judge Battle is a former partner of Mr. Ballinger and is in no way connected with the public service at the present time, is he?

Mr. TODD. Not at all.

Senator PURCELL. It is a fact that you have taken some interest in this proceeding favorable to Mr. Ballinger, is it not?

Mr. TODD. I think I could answer yes to that question.

Senator PURCELL. And you have taken considerable interest, have you not?

Mr. TODD. No, sir; but I was interested when testimony was given down here, or when the statement was made by one of the periodicals that a record which was in my office, had been changed, and I examined that and ascertained to the best of my knowledge and belief that it had not been.

Senator PURCELL. So in much of the testimony that you have given, you have had your mind refreshed on it from reading these records?

Mr. TODD. Yes, sir.

Senator PURCELL. And you rely mostly on what you have learned from the record since coming here, do you not?

Mr. TODD. I do not know whether it is most of it or not—some of it of course.

Senator PURCELL. You testified that you had about thirty matters beside two murder cases, to present to the grand jury at the time the matter came up.

Mr. TODD. That matter about Mr. Jones's testimony regarding my refusing to prosecute this case, I refreshed my memory about; but the statement that was given from my correspondence in the office, his letter to me and my letter to him, I have not refreshed my memory about that since I have been here.

Senator PURCELL. You remember that independently?

Mr. TODD. I did, upon seeing the letter he wrote Mr. Glavis in my presence.

Senator PURCELL. You are not friendly to Mr. Jones, are you?

Mr. TODD. I do not feel friendly to Mr. Jones; no, sir.

Mr. BRANDEIS. You asked me at an early stage to let you know how many claims there were in the Christopher group and how many in the Simmonds. If you will look at page 267 of the chronological list you will see that the Christopher group has 35.

Mr. OLMSTED. That is not it, Mr. Todd, that you have in your hand.

Mr. BRANDEIS. Here it is, Mr. Todd. Thirty-five claims, and in the Simmonds group there are 34 claims. There is one other matter—

Mr. TODD. You have not called that to my attention. I notice that Mr. Glavis's letter of June 8 speaks of this as the Great Western group, the same as I did, and I considered it one group.

Mr. BRANDEIS. You said something about Mr. Christensen having called upon you the latter part of December in regard to some criminal prosecutions for missing papers. I do not know whether you did state anything further in regard to it, but I wish you would tell us what happened.

Mr. TODD. A large number of affidavits were submitted to me and I examined them and came to the conclusion that while the evidence showed that those papers had been abstracted from the official files of the office, the evidence was not sufficient upon which to base a conviction, and recommended that no prosecution should be had. I wrote that letter to the Attorney-General, and the Attorney-General concurred in my views.

Mr. BRANDEIS. Where is that letter?

Mr. TODD. The letter that I wrote to the Attorney-General?

Mr. BRANDEIS. Yes.

Mr. TODD. I presume it is in the Department of Justice.

Mr. BRANDEIS. Have you seen it since?

Mr. TODD. No, sir; I have not.

Mr. BRANDEIS. Have you seen any copy of it since?

Mr. TODD. There was a copy down where Mr. Vertrees was in the Department of the Interior yesterday, I think, in Mr. Christensen's possession, but I did not examine it.

Mr. BRANDEIS. And where are the affidavits on which you gave your opinion?

Mr. TODD. I think they are in Mr. Christensen's possession here.

Mr. BRANDEIS. I think we have called for those affidavits.

Mr. VERTREES. They will be presented.

Mr. BRANDEIS. And the letter of Mr. Todd to the Attorney-General; I would also like to have that.

Mr. VERTREES. Those papers will all be presented.

The CHAIRMAN. Are both sides through with the witness?

Mr. VERTREES. I am through except for just a few questions.

The CHAIRMAN. If you have only a few questions to ask we will finish up with this witness.

Mr. VERTREES. I will get through in five minutes. Mr. Todd, you were asked by Senator Purcell if you were unfriendly to Mr. Jones; I will ask you if anything has ever occurred between you and Mr. Jones other than the words which you have testified to here that Mr. Jones attempted to falsely put in your mouth?

Mr. TODD. No, sir; I had the best of feelings for Mr. Jones until I read his testimony in the press dispatches.

Mr. VERTREES. You have also been asked as to the opinion of the Attorney-General. I will ask you if that opinion does not show that it merely purports to render an opinion on the facts then before the Attorney-General?

Mr. TODD. I am not familiar enough with that opinion of the Attorney-General to state what it does purport to be an opinion of, or is based upon. I do not know what it is based upon.

Mr. VERTREES. I call attention now, in this connection, Mr. Chairman, to a telegram, and I call attention to it because the original, as I understand it, has been sent upstairs to the printer, but on page

115 of the Senate document is a copy of that telegram of April 11: the telegram of Mr. Glavis dated April 11, 1908—which telegram as follows:

Forward to me at Portland all original papers relating to Alaska coal cash and coal declaratory statements. Also wire local land office in Alaska to do likewise. Statute of limitations will prevent criminal prosecution after next October. If cases therefore must be presented next month. Only Simmons and Christopher groups now involved, but all papers are necessary should others develop, as time would then be too limited to secure same.

Which would show that that statement of Mr. Glavis was the the prosecutions would have to begin in May, 1908, and the telegram—

The CHAIRMAN. That is already in evidence.

Mr. VERTREES. That telegram was before the Attorney-General in Mr. Dennett's statement.

Mr. BRANDEIS. I stated that that was in there.

Mr. VERTREES. Yes. I did not catch your statement to the effect.

The CHAIRMAN. Is that all, Mr. Vertrees?

Mr. VERTREES. No, sir; not quite. Mr. Todd, you were asked about Mr. Glavis's procrastination in the matter of prosecution. What was your experience with him in that respect in the Wilson land case?

Mr. TODD. After our rebuttal testimony was in we waited upon Mr. Glavis a long time for further evidence, which he said he thought was necessary to the case, until finally I suggested to him that the case must be closed, and it was closed and the testimony was filed in court.

Mr. VERTREES. Now, to get it entirely clear as to that, the evidence in that case as to an escrow agreement; there was no evidence, as I understand you, to the effect that there was a written escrow agreement?

Mr. TODD. No, sir; I do not think there was any evidence as to a written escrow agreement.

Mr. VERTREES. Was the evidence of the Wilson women which you have criticised contradicted by anyone as to that point, that there was none?

Mr. TODD. No, sir.

Mr. VERTREES. Was there anything tending to show that verbal agreement was ever made in the presence of, or communicated to Mr. Ballinger?

Mr. TODD. No, sir; there was no evidence in the record showing that. In fact, the evidence shows to the contrary. The evidence shows that those parties agreed upon their terms two days before they went to Mr. Ballinger's office and in his presence he drew the deed; that they did not come to terms at the first meeting but they did it over the telephone, and then they went to Mr. Ballinger's office for the deed to be drawn.

Mr. GRAHAM. Could there not be an escrow agreement not in writing?

Mr. TODD. They agreed that it be put in escrow. That is what we call an oral escrow agreement, and left there in the safe without any written evidence of it.

Mr. GRAHAM. But escrow means filed with some third person, does it not?

Mr. TODD. That is what was done in this case.

Mr. GRAHAM. And was it reduced to writing?

Mr. TODD. I do not think it was. The record does not show.

Mr. GRAHAM. How could it be in escrow?

Mr. TODD. Very easily. They just put them in the safe in escrow til the parties agreed to take them out.

Mr. GRAHAM. Put the third person's recollection in the safe?

Mr. TODD. No, sir. The agreement was this, that they put them, til they called for them, together, and they did call for them together.

Mr. GRAHAM. Briefly, does not the word escrow necessarily imply writing?

Mr. TODD. I do not think so.

Mr. VERTREES. Without regard to the exact meaning of that word, in speaking of it as the witness has spoken of it in the case, we understand very clearly what they meant, that they meant an agreement. I have understood you to say that there was no written agreement?

Mr. TODD. The record does not show that there was any.

Mr. VERTREES. Now, Mr. Chairman, the record in the Watson Allen case, the copy referred to, is already before the committee. I wish in this connection to offer here some extracts that I have made arising on that point from the depositions in that case for the purpose of having them printed. Of course, after they appear, if our versaries want any others, they can have those extracts also. But these are extracts from the depositions of Watson Allen.

The CHAIRMAN. That is from this original record that is here to-day?

Mr. VERTREES. Except that they were made from a copy which is already before the committee. I have no doubt that they are precisely the same. I will refer to the page so that there will be no difficulty about it.

Senator PURCELL. I think they had better be submitted to the other side in order to see if they make any objection.

Senator FLINT. Do you want the witness any further, Mr. Vertrees?

Mr. BRANDEIS. I have one or two questions that I would like to ask.

The CHAIRMAN. The paper will be admitted in evidence.

(The paper referred to is as follows:)

Extracts from the record in the case of the United States v. The Wilson Coal Company, The Sterling Coal Company, and Helen Pack Wilson and others, a copy of which record is already on file and was presented with the evidence of Mr. Hoyt.]

EXTRACTS FROM THE DEPOSITION OF WATSON ALLEN.

Q. What was your connection, your earliest connection, with that land in any way?—A. In what particular—I had a contract with R. A. Wilson, or an option, never, on some property over there, I disremember the exact location. It was east of Centralia 9 or 10 miles.

Q. Now, have you any copy of the contract which you had with Mr. Wilson?—A. No, sir.

Q. You have searched for that contract, have you?—A. I only had a memorandum of agreement; he agreed— (Record, 386.)

* * * * *

Mr. MURPHY. Let me ask the witness one or two questions:

Q. Did you ever ask Wilson for a copy of that contract?—A. No, sir.

Q. Might not you get a copy of the contract or get the original?—A. Possibly. I have not seen Wilson since this matter came up.

Q. Was it made in duplicate, each of you having a copy?—A. No, I think not. Do you refer to the escrow agreement?

Q. I refer to the agreement to which you refer. I do not know what you are referring to.—A. I thought Mr. Hoyt was referring to the original option that Mr. Wilson gave me for six claims.

Q. It was just the option that you are attempting to testify to that I am inquiring about now.—A. If it was in relation to that option, that option I had on the six claims, why, there was no written agreement, any more than he just wrote down that he would give me an option.

Q. Mr. Wilson—A. Yes. That was a long time prior.

Q. That is the option you are now testifying about?—A. Yes, sir. (386.)

Q. Do you remember what individual claims were represented in the option, or any of them?—A. I think it was the claims of Helen Pack Wilson and Minnie Marie Wilson, and one of Mrs. Gallileo Wilson. Now, the others I can not remember their names as to who the locators were.

Q. Could you remember them if your recollection was refreshed by having their names mentioned to you?—A. I might.

Q. Do you remember whether one of the claims was a claim of Virgil Wilson?—A. I think so.

Q. Do you remember whether one of the claims was the claim of S. Lauridsen and Henry Camps?—A. Yes; that is what I was trying to think of, Camps. (388.)

Q. Well then, at a later time, did you[r] option or contract, whatever it may have been in relation to the land, take any more definite shape than that?—A. Not at that time. (389.)

A. (Continuing). It finally appeared that Wilson could not deliver all six claims, and they wanted me to take the two claims which were patented.

Q. They wanted you to?—A. Yes.

Q. Did you do so?—A. I told them I did not want to take the two claims without getting the others. They said the others would be forthcoming, and they rather expected me to take the two claims as being a part of the contract, a part of the property.

Q. Did you do that?—A. I did.

Q. In what shape?—A. I took the two claims of Minnie Marie and Helen Pack and gave my note, put it in escrow in Judge Ballinger's office. (390.)

Q. Now, you say your note was put in escrow?—A. Yes; with the deed.

Q. So the deeds were also in escrow?—A. The deeds were in escrow with Judge Ballinger.

Q. In other words, then, both the delivery of the deeds and the delivery of the notes were subject to some further conditions, were they?—A. Yes.

Q. What were these conditions?—A. My recollection was that they were to produce the balance of the other claims; that is, the title to the other claims. (390.)

Q. Now, Mr. Allen, I think that is all of the matter about the corporation. I will turn back now to the conversation you had with Wilson and the option you took to purchase the land. You stated in that conversation that you had a written memorandum from Wilson to purchase six claims for \$60,000?—A. Yes.

Q. I will ask you if that business was transacted entirely with R. A. Wilson.—A. Yes, sir.

Q. Nobody else?—A. No, sir.

Q. You did not see these claimants or anyone else?—A. No, sir.

Q. It was simply his undertaking alone?—A. Yes.

Q. He did not offer you any evidence of title at that time?—A. No, sir.

Q. And you did not know what his title was, did you?—A. No, sir. (401.)

Q. Then, this memorandum that you took was simply a memorandum, so if you met anybody that had money you could present it?—A. Yes; that was the idea, that I had something to show, that I had an option on the property, and there were parties owning adjoining lands who lived in Philadelphia, and I went and saw these people. (402.)

Q. So that if these deeds were executed in 1902, this first option that was given to you by Wilson was in 1900?—A. It must have been about that time I should think. (402.)

Q. Now, there was not any connection, was there, between that option that Wilson gave you and the option which the girls gave you?—A. No, sir.

Q. They were independent transactions altogether?—A. Entirely so.

Q. And had no relation to each other?—A. Only I was to have the other four claims.

Q. That was with R. A. Wilson?—A. Yes.

Q. Now, referring to the deal by which the girls—I refer to Helen Pack Wilson and Minnie Marie Wilson—that transaction was had, not with R. A. Wilson, but with the girls themselves and an uncle of theirs who lives in Los Angeles, Cal.?—A. That was with George—

Q. Mr. Pack?—A. Yes.

Q. Did you know Mr. Pack, of Los Angeles, at that time?—A. No, sir; I did not. The consummation was made with Mr. Pack. He came with the girls, so I understood. (405.)

Q. Do you remember meeting the girls and Mr. Pack in front of the Mutual Life Building in this city on First avenue?—A. Yes, sir.

Q. And you had a long conversation with them there relative to the purchase?—A. Not very much; we went right up to Judge Ballinger's office, and there was not much said on the street; in fact, there was not very much said afterwards when we got to the office. (405.)

Q. Now, Mr. Allen, you had no understanding with the girls that the other claims would be forthcoming? That was an understanding with the father?—A. That was with R. A.

Q. There was nothing said between you and the girls with reference to this?—A. I do not remember that there was. He was delivering title.

Q. You did not know that the girls ever knew of any understanding between you and the father with reference to the other claims being delivered?—A. No, sir. (408.)

Q. You stated that the contracts or the deeds and the notes were left in escrow with Judge Ballinger, or with your attorney in his safe?—A. Yes, sir.

Q. And you say that they remained there until the deal was declared off?—A. Yes, sir. I presume they did, they were left there. (409.)

Q. When you said you did not know this title was wrongfully obtained, do you mean that you were ignorant of any of the facts, or simply that you did not suppose that Mr. Richardson putting up money for somebody to acquire coal land was against the law—you did not know that that was against the law, did you?—A. I did not. (414.)

Q. Did the daughters, Helen Pack Wilson and Minnie Marie Wilson, at any time, in your presence, recognize any authority on the part of their father to act for them in this matter?—A. No, sir; I do not remember that they did.

Q. The matter never came up, the question never came up?—A. No, sir.

Q. So that anything that there was about that would simply be your understanding from conversations which you had with R. A. Wilson?—A. Yes, sir. (417.)

THE EVIDENCE OF HELEN PACK WILSON.

After stating that she resides at 920 Queen Anne avenue, Seattle, Wash., among other things, the witness deposes as follows:

Q. Passing now to the transaction between yourself and Mr. Allen—Watson Allen—I will ask you how long you have known Mr. Watson Allen?—A. Ever since I can remember; practically all my life.

Q. He was an old friend of the family's, was he?—A. Yes.

Q. Did you at any time deed this property to him?—A. The coal land? Yes. (454.)

Q. I will ask you who called your attention to the fact that Mr. Allen might buy the lands? He, or someone else?—A. No; I did not talk with Mr. Allen first about it. I do not recall exactly how I knew that Mr. Allen wanted to buy. I know that I

talked with my uncle, Mr. Herbert Pack, and he knew of it; and I believe I also heard from my brother that Mr. Allen wished to buy it; I do not recall exactly.

Q. Did it come to your knowledge through either your brother or your uncle, did it?—A. Yes.

Q. When did you first see Mr. Allen regarding it?—A. Well, Mr. Allen—

Q. How long prior to the execution of the deed, I will put it?—A. Oh, just a day or two; I don't remember exactly.

Q. Where did you meet him or see him?—A. We were to meet my uncle—and my sister and myself were to meet Mr. Allen at Mr. Ballinger's office. We actually did meet him in the elevator. We went upstairs together, and we talked to Mr. Allen for some time in—

Q. Now, who was present?—A. Mr. Allen and my uncle, Mr. Pack, and my sister and myself.

Q. You do not remember of anyone else being present?—A. No, sir; I do not.

Q. Well, state the conversation that was had there as near as you can remember, what was said; what discussion was had, if any, and what was done.—A. Mr. Allen said that he would like to buy the property, and we at first did not come to terms as to the amount we desired; and the first occasion we talked with Mr. Allen we really came to no agreement. It was still rather undecided, and we concluded to meet again later. (456.)

* * * * *

After stating that they met later, the witness testifies:

Q. Did he state to you any enterprise he was closing up or any source from which he expected to receive money?—A. Yes; a mill, I understood, that he expected to close up, that he expected to sell; negotiating for sale.

Q. Did he tell you what mill.—A. Yes; he told me at the time. It is in this State. I can not recall the name just now; perhaps I can in a minute.

Q. If you will remember the name later, call my attention to it, and we will draw it out.—A. Yes.

Q. Well, what else was said, if anything, do you remember?—A. Just at this first meeting we gave Mr. Allen time to hold it over, and we decided to go and meet again, and it was either the next day or a day or so later, I don't remember the exact time, but my uncle and my sister and I again met Mr. Allen at Mr. Ballinger's office, and this time we came to an agreement as to the price and made a sale of the land to him.

Q. For how much?—A. For \$6,400 a claim.

Q. A claim?—A. A claim.

Q. That was the second occasion?—A. Yes.

Q. Did you meet at the same place?—A. We met in an inner office of Mr. Ballinger's office.

Q. Who was present?—A. Mr. Allen and my sister and myself, and Mr. Herbert E. Pack, and a part of the time Mr. Ballinger was present, and Mr. Frank Brightman acted as notary. (Rec. 458.)

* * * * *

Q. What was done with the papers on that occasion, do you remember; did you execute a deed?—A. Yes.

Q. What other papers were signed by you, if any, if you remember, or what papers were signed by Mr. Allen?—A. I signed the deed; Mr. Allen gave me a check for \$1,000 and a note for the balance, as he had not yet received his money from this mill.

Q. If the check was for \$1,000, then you received a check for \$5,300?—A. I received a check for \$1,000 and a note for \$5,400, and my sister received a like amount.

Q. Was the check delivered to you in person on that occasion?—A. Yes; it was given me by Mr. Allen.

Q. What was done with the deed and the notes?—A. Well, we did not ask for any security from Mr. Allen; my uncle suggested that we put the deeds and the notes in Mr. Ballinger's safe until such time as Mr. Allen could pay the money, or we agreed otherwise, and they were put there merely as security.

Q. Do you remember signing any agreement with reference to it?—A. No, sir; I think there was no agreement signed; just put them in the safe. I remember my uncle suggested it; that I do it as a matter of security. (Record, 459.)

* * * * *

Q. At the time you entered into this transaction with Mr. Allen, did you know anything about your father having transactions with him too?—A. With Mr. Allen?

Q. Yes.—A. He had had business transactions of different kinds with Mr. Allen a great many times, as I remember.

Q. But I mean, did you know of his having any transactions in connection with these lands, or any other coal lands, with Mr. Allen?—A. No, sir; I did not.

Q. In connection with those?—A. No, sir.

Q. You did not know about them?—A. No, sir.
 Q. So if he had arrangements, you knew nothing about them?—A. No.
 Q. Nothing was said about them to you by Mr. Allen, or anyone else?—A. No.
 Q. Now, do you remember whether or not these deeds were afterwards taken out of the safe and recorded, and the notes delivered?—A. Yes.
 Q. I will ask you if you were present on that occasion?—A. Yes.
 Q. Where did it occur?—A. In Mr. Ballinger's office.
 Q. Of this city?—A. Yes.
 Q. Who were present, if you know?—A. Mr. Allen, and my sister, and myself.
 Q. Anybody else?—A. I do not recall anybody else. (Record, 461.)

* * * * *
 Q. Now, could you tell any particular reason why the check was put in escrow with the note?—A. No. By escrow, you mean put in the safe?

Q. Yes; in Judge Ballinger's safe.—A. Well, I do not know what "in escrow"—what it meant, but what was done—

Q. Well, your uncle suggested these matters to be put in escrow so you would have security for the payment of your money?—A. They were just put in the safe without any agreement of any kind—that is, just sealed in an envelope and put in the safe.

Q. So that Mr. Watson Allen could not get the deed until he paid the notes?—A. Why, it would be security. Personally, my sister and I did not ask for any security from Mr. Allen; we had known him all our lives, and his honesty—but my uncle is a very strict business man, and he thought as a question of security that it would be best to put it in that way. It was more a matter of business than anything else. (Record, 501.)

Mr. BRANDEIS. If these papers are to be taken back to the Attorney-General's office, I will call at the Department of Justice and examine them there.

The CHAIRMAN. If there is any mistake, it can be corrected.

Mr. VERTREES. That is all.

The CHAIRMAN. If you want to put in other parts of it, you can do so.

Mr. BRANDEIS. Mr. Todd, I understood you to say, in answer to the questions of members of the committee, that your criticism of Mr. Jones was based in part upon your observation—your brief observation—and in part also upon the wording of his daily reports. Now, are you aware of the fact, and were you at the time you made that statement, that under an arrangement suggested by the chairman of the committee and assented to by counsel Mr. Jones, before the daily reports were printed, went over them, and that certain parts of those daily reports with respect to pending cases were, with the consent of all concerned, omitted from the daily record, as the printing of them might possibly be prejudicial to the public interest? Were you aware of that fact?

Mr. TODD. No, sir; I was not.

Senator FLINT. I understand, Mr. Brandeis, that he based his statement, as far as the daily report is concerned, on the fact that the daily report stated that he had a conference with the United States attorney.

Mr. BRANDEIS. No; it was not that only. That was one thing.

Mr. VERTREES. Conference after conference, he said, and when they were called conferences in the report the witness saw fit then to weigh them accordingly, as I understood it.

Mr. BRANDEIS. Answering and acting upon these inquiries, now, let me ask you whether in referring to the daily reports before you, you desire your testimony, or the basis of your testimony, to be deemed merely the comparison of the daily report of the 21st and 22d of April and the 16th and 17th of May, together with your recollection of what took place on those dates, or whether you referred to other dates of daily reports, the facts of which you had no knowledge whatever?

Mr. TODD. I do not exactly understand the question. I base my opinion of Mr. Jones upon his daily reports. When he reports having had conferences at my office, he just comes in and goes out again; and from his testimony given in this case during the trial, which I have read, and from observing his conduct in the Cunningham cases.

Mr. BRANDEIS. When did you observe that?

Mr. TODD. I saw him at the Cunningham cases there in Seattle at the hearing which took place in the court, which is on the same floor as my room.

Mr. BRANDEIS. How long did you attend in that case?

Mr. TODD. I dropped in once or twice a day, probably.

Mr. BRANDEIS. Is there anybody else's conduct there that you observed?

Mr. TODD. Yes, sir; I observed the conduct of a great many people there.

Mr. BRANDEIS. What part did Mr. Jones take in the conduct of that case?

Mr. TODD. Well, he sat back in the audience and you could see he was viewing it with a spirit of criticism; I might say. He did not seem to approve of the proceedings at all.

Mr. BRANDEIS. He was not the only person who took that attitude of criticism, was he?

Mr. TODD. I think so. He was the only one I noticed.

Mr. BRANDEIS. Did you observe any gentlemen connected with the Department of Forestry?

Mr. TODD. I do not know Mr. Shaw.

Mr. BRANDEIS. Or Mr. Pierce, the law officer?

Mr. TODD. I do not know either of them. Is Pierce the one at Portland? I did not notice Mr. Pierce. I do not know him.

Mr. BRANDEIS. You did not notice?

Mr. TODD. No, sir.

Mr. BRANDEIS. You did not happen to talk with them, did you?

Mr. TODD. No, sir.

Mr. BRANDEIS. That is what you had reference to.

Mr. TODD. No, sir; I did not talk with them at all because I did not know them. There are many things that I had reference to that I do not remember.

Mr. BRANDEIS. Why do you not give us all of them?

Mr. TODD. Well, I should think that his conduct, that he is always testifying about somebody's son-in-law, when he gives it from hearsay, when he testifies about somebody resigning from the district attorney's office, and making inferences about people; and I think his attitude in the Cunningham case of getting affidavits and leaving out material portions would show what kind of a man he is.

Mr. BRANDEIS. What material portions did he leave out in the Cunningham cases?

Mr. TODD. Things that were material to the party himself, he would leave out and not submit it to the office.

Mr. BRANDEIS. Which portion?

Mr. TODD. I can not tell you now. I do not remember the details of that.

Mr. BRANDEIS. Just tell us one detail.

Mr. TODD. I read the testimony as given in the proceeding and made a copy of it and he admits himself in taking the affidavits of

claimants in different coal claims, he would leave out anything favorable to themselves.

Mr. BRANDEIS. Where did he state that?

Mr. TODD. In the testimony in the Cunningham case.

Mr. BRANDEIS. Where?

Mr. TODD. In Washington.

Mr. BRANDEIS. Were you present?

Mr. TODD. No, sir.

Mr. BRANDEIS. Do you think as an officer of the Government, with considerable experience, that you ought to state, particularly after your criticism of Mr. Jones, from such slight information as you have indicated, that you have those facts that you are now stating?

Mr. TODD. You are asking me for all the things upon which I based my criticism of Mr. Jones.

Mr. BRANDEIS. But I ask you now whether those things on which you based your criticism were not in the opinion of a man holding an important public position, such as you did, such that you ought not to have based any opinion on them at all?

Mr. TODD. No, sir; I do not think they are such things as I should not have based an opinion on. They are such things in which a man could not arrive at a definite opinion. I am simply giving you an opinion.

Mr. BRANDEIS. For what it is worth?

Mr. TODD. For what it is worth, exactly.

Mr. BRANDEIS. That is all.

Mr. VERTREES. I merely want to interrupt now to ask whether those depositions, particularly the ones just referred to, have been printed as yet. They have been in the hands of the printer.

The CHAIRMAN. They are in print. I am informed that proof sheets have come up. We will probably have them to-morrow.

Mr. BRANDEIS. There is one other question that I would like to ask of this witness. Mr. Todd, you spoke of affidavits taken by Mr. Jones, that he had stated only things unfavorable.

Mr. TODD. Yes, sir.

Mr. BRANDEIS. Do you refer to affidavits taken in the Cunningham case?

Mr. TODD. Those are the ones I had reference to particularly.

Mr. BRANDEIS. And you think those affidavits of Mr. Jones in the Cunningham cases did state things unfavorable to claimants?

Mr. TODD. Yes, sir; I am of that opinion.

Mr. BRANDEIS. Do you know whether Judge Ballinger thought they did?

Mr. TODD. No, sir; I do not know what Judge Ballinger thought about it. I never heard him express himself.

The CHAIRMAN. Are you through with the witness? If so, you are excused, Mr. Todd, and the committee will now take a recess until 2 o'clock.

(Accordingly, at 1 o'clock p. m., the committee took a recess until 2 o'clock p. m.)

AFTER RECESS.

(The committee reassembled after recess at 2 o'clock p. m.)

The CHAIRMAN. The committee will please come to order. Mr. Vertrees will please proceed.

Mr. VERTREES. Call Mr. Love.

TESTIMONY OF MR. HENRY K. LOVE.

Mr. Henry K. Love, having been first duly sworn by the chairman, testified as follows:

The CHAIRMAN. Please state what your name is.

Mr. LOVE. Henry K. Love.

Mr. VERTREES. Where do you live, Mr. Love?

Mr. LOVE. Fairbanks, Alaska.

The CHAIRMAN. I will ask you to speak a little louder, so we can all hear you.

Mr. LOVE. Fairbanks, Alaska.

Mr. VERTREES. Do you hold any official position with the Government of the United States? If so, state what it is.

Mr. LOVE. I am United States marshal of the third division District of Alaska.

Mr. VERTREES. How long have you been marshal?

Mr. LOVE. Since the 9th of October, 1908.

Mr. VERTREES. Previous to that time had you held any other position?

Mr. LOVE. I was special agent for the General Land Office.

Mr. VERTREES. Before you were appointed marshal?

Mr. LOVE. Well, I had resigned some ten days before the appointment was offered me, but before I qualified.

Mr. VERTREES. Practically after that time?

Mr. LOVE. Yes, sir.

Mr. VERTREES. How long had you been special agent?

Mr. LOVE. I think sometime in May, 1904, I was appointed.

Mr. VERTREES. So you were special agent for the General Land Office continuously from May, 1904, until October, 1908, or thereabouts?

Mr. LOVE. Until I resigned about ten days after the Attorney-General wired me offering me the marshalship.

Mr. VERTREES. As such agent had you at any time investigated any Alaskan land claims?

Mr. LOVE. Yes, sir.

Mr. VERTREES. Particularly in the year 1907, had you done so, and previously?

Mr. LOVE. Yes, sir.

Mr. VERTREES. Do you recall what claims you have investigated?

Mr. LOVE. Well, I had investigated a great many besides the coal claims—you refer to coal claims, do you not?

Mr. VERTREES. Coal claims; yes, sir.

Mr. LOVE. I investigated the Cunningham, and more or less practically all of them, but the Cunningham claims in particular, because they were the only ones that had applied for entry.

Mr. VERTREES. You are the special agent, H. K. Love, who made the reports with respect to these lands, particularly the Cunningham lands—are you?

Mr. LOVE. Yes, sir.

Mr. VERTREES. Are you acquainted with the Mr. L. R. Glavis?

Mr. LOVE. Yes, sir.

Mr. VERTREES. How long have you known him?

Mr. LOVE. Since about the 20th of June, 1908.

Mr. VERTREES. Are you acquainted with Mr. H. Tillard Jones?

Mr. LOVE. I certainly am; yes, sir.

Mr. VERTREES. How long have you known him, Mr. Love?

Mr. LOVE. Since the early part of July, 1907.

Mr. VERTREES. What were the circumstances, do you recall, under which you became acquainted with these two gentlemen?

Mr. LOVE. Well, Mr. Glavis—

The CHAIRMAN. A little louder, please, so that we can all hear you.

Mr. LOVE. Mr. Glavis was chief of the field division located at Portland, Oreg., and I think it was the 15th day of June, 1908, he wired me to come to Portland, that they had attached Alaska, which had been my field, to the Portland office, and he wired me to come to Portland with my records, so it was about the 20th of that month that I met him. And I met Mr. Jones in July, 1907. I was in Seattle and he was in Juneau, Alaska, and he wired me to stay in Seattle, as the commissioner had instructed him to consult with me on some coal claims of Alaska, and so I remained there and met him.

Mr. VERTREES. Is it not true that you had made reports as to these lands, and I speak particularly of the Cunningham lands, to the register and receiver at Juneau, and also made a report to the General Land Office at various times?

Mr. LOVE. At the time of meeting—

Mr. VERTREES. No; at any time.

Mr. LOVE. Oh, yes, sir.

Mr. VERTREES. Previous to meeting them you had reported to the register and receiver at Juneau, had you not?

Mr. LOVE. Yes, sir. On about 30 out of the 33 claims.

Mr. VERTREES. Had you reported unfavorably, Mr. Love?

Mr. LOVE. Favorably.

Mr. VERTREES. Do you remember the date of your report to the General Land Office?

Mr. LOVE. Well, I do not remember.

Mr. VERTREES. To refresh your recollection, it was August 2, 1907.

Mr. LOVE. I do not remember, Mr. Vertrees. It was this way; my orders as special agent were to simply report to the local office, and I presume that they had had their orders to send my report to the General Land Office. My report to the General Land Office of August 2 was occasioned by a different incident; it was out of the regular order.

Mr. VERTREES. It was?

Mr. LOVE. Yes, sir.

Mr. VERTREES. And so that the matter had stood until that incident occurred, so far as you were concerned, upon your report to the office of the register and receiver?

Mr. LOVE. Yes, sir; asking, however, that my report be made a part of the record for the information of the—

Mr. VERTREES. What was the special incident to which you refer? I might as well ask you about that now as later.

Mr. LOVE. Well, I had seen Mr. Cunningham in Seattle, and he had said something to the effect that they had held a meeting some time before in Spokane for the purpose of inducing those who had gone to entry to put their claims into a trust company with a view to the organization of a company. After that Judge Ballinger—this was after I had reported favorably and these claims had gone to entry—after that in a conversation in Judge Ballinger's office—I do not recall just how it came up, but he said that any transfer of property after entry and before patent vitiated the entry.

Mr. VERTREES. Now, wait a moment. You say in his office. You mean by that, do you not, his office in Seattle?

Mr. LOVE. Mr. Ballinger was spending a vacation, as it were, in Seattle, and when I saw him it was in his office, the most convenient place.

Mr. VERTREES. So the incident consisted of two conversations—I mean the incident on which this report of August 2 is based. They were a conversation you had with Cunningham, in which he stated to you what they were endeavoring to do, and then a conversation based on that which you had with Judge Ballinger; or is it conversely, with Ballinger first, then with Cunningham?

Mr. LOVE. Oh, no; with Cunningham first.

Mr. VERTREES. With Cunningham first?

Mr. LOVE. Yes, sir. Then with the Judge after that. After that I went to the hotel and found Cunningham again and asked him more in detail about it and told him what Judge Ballinger had said; that I was going over to the land office and write a letter reporting that and asking that the claims be suspended, providing for the department to decide whether that was a legal objection or not. And I asked him to go over and see the letter before I mailed it, because I did not want him to be able to deny the facts as I stated them in my letter. He said he would come over. I wrote the letter on August 2. He did not come. And I went to the Hotel Ranier-Grande several times, and held the letter, I think, perhaps two or three days before I mailed it. That is my letter of the 2d of August, 1907.

Mr. VERTREES. And that is written because of the conversation with Judge Ballinger in his office, in which he had expressed the legal opinion to you that any arrangement made, even though the entries had been completed prior to the patent, was illegal?

Mr. LOVE. Yes, sir.

Mr. VERTREES. Had you understood it that way previous to that conversation?

Mr. LOVE. No, sir.

Mr. VERTREES. And you felt it your duty to bring that fact that you had obtained from the conversation with Cunningham to the department for its determination?

Mr. LOVE. Exactly.

Mr. VERTREES. Now, Mr. Love, Mr. Jones, the gentleman to whom we have referred, has testified in this case, and I wish to call your attention to a statement of his which is to be found on page 950 of the record. I will read two questions and answers:

Mr. BRANDEIS. Now, was there any interview in which you had any particular conversation with him in regard to Mr. Love and his relations to the investigations you had under way?

"Him" is there Judge Ballinger—

Mr. JONES. Yes. On one occasion Judge Ballinger and I were coming down from his office, and while waiting for the elevator I told the Judge that Mr. Love appeared to be half-hearted in this investigation, and that it was probably due to the fact that he was a candidate for the office of United States marshal in a proposed new judicial district in Alaska, and I recited to the judge a conversation that Mr. Love had with me.

Mr. BRANDREIS. Will you give us that conversation?

Mr. JONES. In which he said that he was glad that I had been put on this case, or some other agent than himself had been put on this Alaska investigation, because it embarrassed him a great deal to be investigating friends and persons to whom he happened to be under certain obligations in Alaska; that H. R. Harriman, who represented the Clark, Davis, and Lippy combination of coal claims, was a personal friend of his and of his family, and that when one is investigating cases in Alaska and traveling around he has to partake of the hospitality of these very people who are under suspicion, and that if they make it unpleasant for you you can not go next door and stop at another hotel as you can in the States, you have got to either take what they give you or sleep outdoors. And he seemed to be very much relieved at being taken off the cases.

Now, is that statement true or not?

Mr. LOVE. That is absolutely false.

Mr. VERTREES. I wish you would state what did happen or what conversations did take place with reference to these matters.

Mr. LOVE. Mr. Jones landed in Seattle Sunday and came out to my house on Eighteenth street as we were finishing lunch, and I took him and my little girl out to the park that afternoon, and during the conversation I told him that that spring the office had disallowed some expenses that I thought just, and some that had been allowed ever since I had been in Alaska; and I am quite sure that I then told him that I was a candidate for marshal in Alaska and hoped to be appointed the following winter when the division bill would pass, and that I would be very glad to be out from under the Interior Department, which was a fact.

I never once told him, or never thought—it never entered my head—that it would be a benefit for me to get out from the investigation of the coal lands; never once. The first intimation was when I received a letter a year after from the department, saying that Mr. Jones had so reported him. I told Jones that day—if the committee will allow me, I may cite a letter that I had written to the department about sixty days before from Seattle, and the letter is in evidence now, to the effect that the important work of the coming winter was the investigation of the coal lands of Alaska, because they were beginning to go to entry, and that the claimants all lived in Seattle and Portland, and Spokane and other places in the States, and none in Alaska to amount to anything, and therefore I asked to be ordered to Seattle that winter so that I could properly investigate those claims, although about sixty days after Jones's telling that I wanted to get out of them. That Sunday afternoon I told him I was going to ask Judge Ballinger to put me to work on the coal claims in Seattle because I wanted to be with my family, and he said he would back me up. Monday morning we called on the Judge, and after the visit, just as we were leaving, I told the Judge how I was circumstanced and asked to be put on the coal work. Jones spoke up and said: "Yes, Judge, I would be glad to have Love assist me." All of which, in my opinion, does not sustain the charge that I was ever trying to get out of the coal claims.

The coal claims of Alaska are held in groups, and when Jones and I went over to the Land Office and started to outline the different

groups we came to the Harriman group. I told Jones then that when I brought my wife to Seattle that spring—but I do not care to discuss this much—but we were expecting a son about the last of September, and I left her there and went back to Alaska, and she had a great deal of trouble, and the Harrimans were very nice to her and very helpful. So when I returned in July the first thing I was told about was our social obligations to the Harrimans; therefore, when I came to the Harriman group I told Jones what these obligations were—he had been at my house, and he knew all the circumstances—and I asked him to take the Harriman case and I would take another course which he perfectly agreed with, the propriety and all. I never connected it up with my life in Alaska, and never with any marshalship.

And the other incident that he tells about there, about my talking about conditions in Alaska, came about this way. During our early work one day M. A. Green came into the Land Office and visited—he is one of the coal claimants—

Mr. VERTREES. Pardon me, this was now a different conversation altogether?

Mr. LOVE. Yes, sir; but he has connected them all up there.

Mr. VERTREES. Yes; I understand.

Mr. LOVE. About as we were leaving I invited Jones and Green to have a drink with me, and we went downstairs—there is a bar under the land office. Green started in and Jones stepped back and said he would not drink. I said "Very well, Green, you don't want any drink," and we walked up the street. Green dropped out then, and Jones turned to me and said that he would not drink with anybody that might be under investigation, which I thought was very proper. But I told him it was quite different in Alaska. The communities were small, we traveled there by boat and are thrown closely together, and that, so far as I was concerned, I had met the men of Alaska as men and expected to be met that way and was not afraid of a little social contact. Then I said at one time I had even stopped with a man that I was investigating, and out of that he makes that statement. I stopped with this man and paid my way. It was not absolutely necessary that I stop with him, and it was a gratuitous falsehood if I made any such statement to Jones as he charges me with. It is not necessary to stop with any one particular person in Alaska as a rule. This was at Katalla, in the early days, and the only place to stop there was in a saloon with a dance hall below, and I preferred to stop with Mr. Davis, and did.

Mr. VERTREES. Now, as to the question of your pretending to be relieved of this because you were a candidate for marshal and asking favors of those people to recommend you. I wish you would state to the committee whether or not for that position you relied upon the recommendation of those people, or upon what you did rely to get that office—just state fully your relations in connection with the President and all.

Mr. LOVE. I happened to be a trooper in Colonel Roosevelt's regiment, and while I was in—I am not ashamed of it at all.

Mr. MADISON. You haven't any occasion to be.

Senator PURCELL. Were you from Yale, too?

Mr. LOVE. No, sir; I was from the farm. While I was at Salt Lake, before ever going to Alaska, the President considered me for

an appointment at Nome—the marshalship at Nome, which was vacant—but that fell through. I went to Alaska the next year. I heard of this division bill that had been pending several years, dividing the third division of Alaska into two divisions, and I applied for the new division that would be created.

The CHAIRMAN. Whom did you apply to?

Mr. LOVE. I applied to the President. I received word after word from his secretary a year before I ever knew Mr. Jones or had anything to do with the coal claims, that my papers were on file with the Attorney-General and I was to have the first vacancy. I systematically avoided trying to get any influence to bear upon the President. I did not have a United States Senator and could not get one. And if I had not depended upon him expressly and entirely the chances are I would not have succeeded. I did, however, write to old friends of my father—who was judge for thirty or forty years in Iowa—such men as John F. Dillon, of New York, who wrote the President, and that was simply to give him some idea who I was, other than a trooper in his regiment. I also secured letters from some ministers, little bankers, and merchants in Alaska, so that he could see that I was locally indorsed, but I had never asked any coal men, or any one else, except Commissioner Britton, who had a coal entry, and I was his land lawyer many years before in Dakota. I never sought any influence or ever avoided any for that position—political influence, I mean.

Mr. VERTREES. I call your attention to one statement of Mr. Jones, which is to be found on page 951 of the record, in which Mr. Jones testifies as follows:

Was John R. Young one of the coal-land claimants?

Mr. JONES. Yes, sir.

Mr. BRANDEIS. Was there anything special in regard to that affidavit or the facts in which the affidavit was given?

Mr. JONES. Well, Mr. Love and I went down to Mr. Young's office and took his statement, and at first Mr. Love wanted him to sign an ironclad affidavit that he had drawn up himself, where the party said that no one save himself had any interest in the coal claim in any way, shape, or form, either expressed or implied, but Mr. Young wanted to make out a more full affidavit according to his own ideas.

Mr. VERTREES. What do you say as to that—what are the facts in regard to that matter?

Mr. LOVE. The fact is that the Sunday we met and gave Jones a copy of an affidavit that I had drawn up for use, and had used in the Cunningham claims; told him the state of the Cunningham claims. A week later we called on Young together, and I did the cross-examining, for the most part, of Young. Young did not want to sign any affidavit, even after he claimed that the statements were correct, but he did not object to signing the one that Jones—Jones produced the affidavit that I had furnished him a week before, and Young did not want to sign that or any other affidavit, although he had admitted from the cross-examination that the statements were correct. He never objected to signing that, because it was ironclad and all prepared for him—nothing of the sort. Jones finally swore him to that affidavit, after making the necessary corrections, as the record will show, and I took the original affidavit from him in Jones's presence, as the result of the cross-examination, for the most part, which I had had with him.

Mr. VERTREES. Then, if I understand you, the affidavit which he called the ironclad affidavit was presented by Mr. Jones himself and was the formal one which you had given him some time before, as illustrating the kind you had used with the Cunningham people?

Mr. LOVE. It was the actual one.

Mr. VERTREES. The actual one?

Mr. LOVE. Yes, sir.

Mr. VERTREES. And at this interview that I speak of, there were two affidavits taken?

Mr. LOVE. Yes, sir.

Mr. VERTREES. Of Mr. Young—one taken by Mr. Jones on the form you have mentioned, with the corrections, to make it fit his case, and another relating to other matters taken entirely by you; is not that true?

Mr. LOVE. Yes, sir.

Mr. VERTREES. I here show you the two affidavits and ask you first, if the one taken by you is not entirely in your own handwriting?

Mr. LOVE. Yes, sir.

Mr. VERTREES. And if the other is the one you refer to as the so-called ironclad affidavit?

Mr. LOVE. Yes, sir.

Mr. VERTREES. Please read them; I ask that they be admitted.

The CHAIRMAN. They are received.

(The affidavits are as follows:)

EXHIBIT No. 14.

AFFIDAVIT OF APPLICANT.

STATE OF WASHINGTON, COUNTY OF KING, city of Seattle, ss:

J. R. Young, of Seattle, King County, Washington, being first duly sworn according to law, deposes and says; that he is the identical person of that name who made, ~~by power of attorney to one~~ a coal location of 160 acres of public land in the Kayak Recording District, Alaska, under the Act of Congress approved April 28, 1904, said coal claim being known of record as the "Tacoma" coal claim; that he is the same person who applies to enter said claim under U. S. Coal Land Survey No. _____;

That said location was made for the sole use and benefit of the affiant, and has ever since so remained his, and in his exclusive control, *except so far as the verbal lease to T. P. McDonald, for ten years, is concerned*; that at no time prior to location or at such time since has affiant entered into any agreement, expressed or implied, or pledged himself by promise or otherwise, expressed or implied, by which the title to said land, or any part thereof, or interest therein, is to pass to any other person or association whatsoever; *except so far as the verbal lease to T. P. McDonald, for ten years, is concerned*; that in event said claim goes to entry in the U. S. Land Office at Juneau, Alaska, and the Receiver's receipt for the purchase price issues, he will not be under any contract or obligation or promise to sell or convey said tract to any persons or persons or association, or to put same into any company or joint holding for any purpose, or to otherwise dispose of same, but will be free in every way to hold said tract.

to lease or sell it at any future time *at the expiration of the ten year lease to T. P. McDonald, aforesaid.*

That he does not now know any person or persons or association that intend or contemplate the leasing or the purchase of said tract *except as above mentioned in relation to T. P. McDonald's lease.*

That a valuable vein of merchantable coal has been developed by the affiant, ~~through his said agent,~~ upon said tract, as he verily believes; that the affiant has expended in making said location, ~~in charges for services of said agent,~~ in developing said vein of coal and in expenses incident to the acquirement of title the sum of sixteen hundred dollars; that said sum was his own personal funds; ~~or borrowed for such purpose, but without any agreement or understanding that the person loaning such, or anyone other than the affiant, should have any interest in or control over said tract;~~ *That affiant has no idea of entering into any agreement or combination with any person for the sale of his said coal claim or of entering into a pool for handling said claim, but that he intends to let T. P. McDonald work said claim on a royalty pursuant to an agreement made, verbally, in November, 1906.*

That this affidavit is made for the purpose of additional evidence of the affiant's bona fides in the matter of said coal location and proposed entry, and for use as part of the record in said application.

J. R. YOUNG,

Subscribed and sworn to before me this twenty-eighth day of July, A. D. 1907, and I hereby certify that the changes and interlineations were made by affiant prior to signing same.

HORACE TILLARD JONES,
Special Agent, G. L. O.

EXHIBIT No. 13.

STATE OF WASHINGTON }
County of King } s.s.:

J. R. Young, Pioneer Block, Seattle, Washington, being first duly sworn on his oath deposes and says; that he is claimant as Locator of Coal Location No. 367, Kayak Recording District, Alaska, known as the "Tacoma" claim and that he is the agent of record for Maude Love of Lynden, W. Va., B. S. Williams, bookkeeper in the Penitentiary at Walla Walla, H. W. Young, Lynden, W. Va., and Matilda Burke wife of E. C. Burke, Seattle, as Coal Claimants in said district; that affiant, about Nov. 8, 1906, entered into a verbal agreement or lease with one T. P. McDonald by which McDonald was to enter upon said Coal Claim of affiant and prospect and develop the coal thereon and operate the mine thereon so developed, said McDonald to have the sole possession of said tract for the term of ten years, the life of said lease, and as consideration for said lease said McDonald was to have all coal mined thereon, paying to said affiant a royalty of 15 cents per ton for all coal mined during the first three years and 20 cents per ton the remaining seven years; that at the expiration of three years McDonald is, under the terms of said agreement, at liberty to cease his operations, whereupon all improvements made by him on said tract or in connection with the mining thereof are to

revert to affiant, and that at the expiration of said lease all such improvements are to revert to affiant.

That above royalty is the sole consideration for said lease; that said lease or agreement does not contain any agreement for sale, nor does any such exist, verbal or otherwise, with said McDonald or any person whomsoever.

That affiant has expended on said tract in running a certain tunnel a short distance east of McDonald's work, and in purchase and installing a tram at that point and building a coal dock the sum of \$1600.00, the above sum to include \$100.00 paid for first survey of said tract. That said sum was the actual money of affiant.

That on the claim of Maude Love as above there has been expended some \$400 or \$500.00 in the running of a small tunnel some 50 to 60 feet deep, that did not catch the vein, tho it shows above; that affiant believes that all the money expended in the claim of said Maude Love was her own particular property and affiant knows that she takes this claim for her own use and benefit; that on the claim of H. W. Young, or what was then thought to be his, the sum of \$400 to \$500 has been expended opening a vein of some 30 ft. by tunnel some 10 ft. and the building of a log-house; that such sum was the exclusive property of said H. W. Young; that a subsequent survey may show such improvements to not be on the tract of said H. W. Young.

That on the B. S. Williams claim nothing has been expended except that affiant opened a vein about 3 or 4 ft. thick in one place and 2 ft. in another, by two to four shots at former place and an open cut at latter point, except the original survey at expense of \$100.00; that such sum of \$100.00 was paid by said Williams as his own.

That on Mrs. Burke's claim about \$300 to \$400.00 have been expended in stripping a small vein of coal about 4 ft. in thickness for some 30 ft.

That in each case above the amounts expended include \$100.00 paid for the first survey made by U. S. Deputy Surveyor Brown.

That affiant believes the money expended on the Burke tract to have been the separate funds of Mrs. Burke and that she takes the claim for her own use and benefit, and not for her husband.

That affiant is to be paid by the several claimants for his services but that such payment is not to consist in any part of or interest in any of said tracts.

That none of the claimants above named, save affiant, has any lease, agreement or understanding with said McDonald or anyone affecting the lands embraced in their respective claims, so far as affiant knows or believes.

That the royalty above referred to is to be calculated upon the coal sold by McDonald.

J R YOUNG

Witness:

HORACE T. JONES.

Subscribed and sworn to before me this 28 day of July 1907 at Seattle, Washington.

H. K. LOVE,
Special Agent G. L. O.

Mr. VERTREES. In whose handwriting are the interlineations in that typewritten form?

Mr. LOVE. Mr. Jones's.

Mr. VERTREES. Did I understand you to say that either then or previously you had informed Mr. Jones that you had favorably reported on the Cunningham group of claims?

Mr. LOVE. Yes, sir; that is not all. There were some three or four claimants that had not returned these affidavits to me.

Mr. VERTREES. What was your system of taking affidavits from these claimants, Mr. Love?

Mr. LOVE. The claimants, with the exception of Cunningham himself, and Ignatius Mullen, the son of the receiver, were nonresidents of Alaska; Cunningham was a nonresident, but he was often here. My regulations required me to remain within my district. I was not allowed to go out of my district, and consequently when the Cunningham claims came up for entry the only thing I could do, as I thought, investigating with the claimants themselves, as I could not reach the claimants, so I drafted the affidavit and sent it to them. I made other inquiries at Katalla, and from Cunningham himself, and a few that I met that were acquainted, or thought they were acquainted, or claimed to be acquainted. But I could not reach the claimants themselves, being nonresidents; so I drafted that affidavit and sent it to them.

Mr. VERTREES. To all of them?

Mr. LOVE. Yes, sir.

Mr. VERTREES. Did you send a circular letter with the affidavit to each?

Mr. LOVE. Yes, sir.

Mr. VERTREES. Look at this letter and see if that is the character of letter that you sent out or not, Mr. Love.

Mr. LOVE. Yes, sir; this was one that I sent to Mr. Mullen—Mr. Mullen was over at Seward at the time.

Mr. VERTREES. Were the others similar in form?

Mr. LOVE. Yes, sir; the same.

Mr. VERTREES. I wish that read to the committee. I will read it to show the character of letter that Mr. Love would send out with this affidavit. This letter is dated:

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Juneau, Alaska, November 2, 1906.

Mr. IGNATIUS MULLEN,
Seward, Alaska.

DEAR SIR: I write you, as special agent for the General Land Office and in connection with your proposed entry of coal land under survey No. 41, Kayak recording district, Alaska.

It is my duty to safeguard, as far as possible, the legality of all appropriations of the public lands. With this in view, I submit herewith for your consideration a statement in the nature of a supplemental affidavit. After carefully considering this, if you find it presents the exact truth concerning your status with regard to the tract involved, I would suggest that you sign and swear to same at once and return to me.

If you find it necessary to change it, to add or erase, this should be done. It is not intended for execution unless the exact truth, nor is it intended to apply a hard and fast rule, beyond the actual requirements of the law.

If you can not execute it, I would be very glad to be advised, with your reasons herefor.

Yours, very truly,

H. K. LOVE,
Special Agent, G. L. O.

You can use this copy, Mr. Stenographer.

The CHAIRMAN. That is admitted.

Mr. VERTREES. Who was Ignatius Mullen, Mr. Love?

Mr. LOVE. He was a son of the receiver of the land office at Juneau, Alaska.

Mr. VERTREES. Now, I want to call your attention to another statement made by Mr. Jones in deposing here which is to be found on page 955 of the record, in which he is making a statement with reference to the report sent in, which you did not sign. He was asked this question [reading]:

Mr. JONES. It was not signed by anyone when it first went in. I inadvertently neglected to sign it, but subsequently I signed it and sent it on.

Mr. BRANCIS. Was there any design that it should be signed by anyone besides yourself?

Mr. JONES. Mr. Love was present in the room in the United States Land Office where I prepared the report when I made it out, and I asked him before preparing it if he would not sign it with me; would not make a joint report. He said no; he did not want to have anything to do with it.

Mr. BRANCIS. Did he give you any reason why?

Mr. JONES. It was the same reason he had given for being relieved, not having to make the investigation, that he did not want to—

And then he is broken in on before he concludes it.

Now, I want to ask you if you did decline to sign that report?

Mr. LOVE. I did.

Mr. VERTREES. Now, for the reason here stated, or for another reason?

Mr. LOVE. For a very different reason.

Mr. VERTREES. Did you state that reason to him?

Mr. LOVE. Yes, sir.

Mr. VERTREES. And the one he gives here, then, is not true, as I understand you?

Mr. LOVE. It is not.

Mr. VERTREES. Well, what was it? State the conversation between you and Mr. Jones.

Mr. LOVE. Mr. Jones had been sent to Alaska that spring into my bailiwick, as it were. Besides this I had received what seemed to me quite a curt letter from the office in reply to my application to be sent to Seattle, where I could investigate the coal claims properly.

Mr. VERTREES. From whom, Mr. Love?

Mr. LOVE. It was signed by Mr. Dennett.

Mr. VERTREES. Well, proceed.

Mr. LOVE. And when we went over to the office to make out the report—that is, the work being completed—Jones turned to me and said: "How shall we make this out, a joint report?" or something to that effect. I can not quote the exact language, but that was the idea. I said: "No." Judge Ballinger had put me to work as an assistant to Jones in a territory that had been mine, and then I said to Jones: "I have not spoken of it before, but now the work is over I want to tell you that I am sore in having been apparently superseded in this way. I am only your assistant, and I will not sign the report." Later on I secured other affidavits there in Seattle, and following that same principle I sent them to Jones for him to make out the report.

Mr. VERTREES. As the principal and you as assistant?

Mr. LOVE. But I never then or at any other time told him I wanted to get out the coal lands of Alaska, and I never thought of the thing; it never entered my head.

Mr. VERTREES. Did you or not decline to sign that report because you considered it as conflicting with previous reports you had made as to the Cunningham claims?

Mr. LOVE. Not at all. I declined to sign it before it was ever made up.

Mr. VERTREES. Did it in point of fact conflict, so far as the Cunningham claims were concerned, as you understand it?

Mr. LOVE. Jones had brought over from Spokane, I think, two affidavits from Cunningham locators, and if they did anything they bolstered up the Cunningham case, in my opinion.

Mr. VERTREES. It appears, Mr. Love, in volume 2 of the evidence, at page 803, or rather page 799—there appears a letter from you, Mr. Love, dated Juneau, Alaska, April 16, 1908, to the Commissioner of the General Land Office, which purports to be a reply to certain matters and things that he had brought to your attention, mostly upon the testimony of Mr. Jones. Do you recall that letter?

Mr. LOVE. Yes, sir.

Mr. VERTREES. You there state the situation and the facts as you understand them. The one clause to which I wish to call your attention is found on page 803, and is this—I read now from your letter to him, and as you quote now, to begin with from his letter to you. You say [reading]:

Your letter states:

"The records here show that eight days previous to that time (August 10) you had made an informal report to this office on the Cunningham group of entries (embracing 26 entries), which in effect recommended that they be clear listed for patent, though you never mentioned at any time to Mr. Jones that you had submitted any such report."

Now, you added after quoting that:

I beg your pardon, that report did not "clear list" those entries for patent, but on the contrary raised a question as to their regularity, although I had previously "clear listed" them. But this is of little importance.

And without reading it now, as it is in the record, I will call your attention to the fact that you go on then and refer to a conversation with Judge Ballinger that you have already detailed. In that letter you met Cunningham at the Ranier-Grande Hotel, and inquired of him about what his people were doing, and that you told him of Judge Ballinger's expression, and so on, and that then you made the report. Now, I want to ask you there in the statement in your letter if you did not clear list those entries for patent, what did you mean by that?

Mr. LOVE. That was the first time I had ever heard the phrase "clear list" used; that is, technically used in the land office. I think you will find it there in quotation marks.

Mr. VERTREES. Yes.

Mr. LOVE. I supposed that what they meant by "clear listing" was when you report a case to be absolutely free from any question, either of fact or of law. And I had reported a condition that might, not in my opinion, but that might raise a question of law, and I supposed that that took it out of what they were pleased to call "clear listing;" it was a phrase that I did not know the full purport of, because I had never heard it before.

Mr. VERTREES. Your reports, so far as the facts were concerned, have been favorable?

Mr. LOVE. Yes, sir.

Mr. VERTREES. And the only question you had raised was the question of law based on the conversation with Judge Ballinger which you have already stated?

Mr. LOVE. Yes, sir.

Mr. VERTREES. He says there that you had not mentioned to Mr. Jones the fact that you had reported that these lands had been clear listed. What about that?

Mr. LOVE. I had told him on our very first day's acquaintance that I had reported them, recommended them to the Land Office for entry, but I do not know whether that means that I did not tell Jones about having written that letter or not. Does that refer to the letter of—

Mr. VERTREES. I can not say. How was that—did you tell him?

Mr. LOVE. Well, I do not know. Jones was away for a week, and then came back, as I remember it, for a couple of days, and I may have mentioned it to him, and I may not, but I did not consider that the Cunningham cases were of his concern anyway, as they had been reported by me before I knew him at all. It is more than probable that I mentioned the letter, and it is quite possible that I did not.

Mr. VERTREES. There is another statement of Mr. Jones that I wish to call to your attention, and that is found on page 995 of the record. In answer to a question, Mr. Jones said—it is about the middle of the page—that Mr. Ballinger was under the opinion that relief was needed in Alaska, and in stating it he states it this way:

Mr. JONES. Yes, sir. Mr. Ballinger stated that he did not consider that it was a just thing that parties who had put in so much money there developing these claims, and where stock had been sold, probably to innocent purchasers, etc., that they should lose their title, and that if there was any way of passing laws so that these people could get these coal claims he believed in doing it. I told him it would work a hardship on some people, but that I did not believe in having laws that were not enforced. The laws were to the effect that a man could not combine and sell stock in something he did not own or had no title to.

Do you recall any such conversation as that, Mr. Love?

Mr. LOVE. No, sir. If you mean by "any such," I say no. But the question of the result of losing claims and the effect on the innocent person was discussed, not, as it were, officially, but as a matter of comment, but never with any expressions from Judge Ballinger that he considered them any of his official or other concern.

Mr. VERTREES. What was the general directions that he gave you in those conversations there. What I mean is, whether to pass by any person or to investigate generally and thoroughly.

Mr. LOVE. You mean at this time?

Mr. VERTREES. At any time up there, as to what Mr. Ballinger wanted the people to understand with reference to the Land Department.

Mr. LOVE. Well, Mr. Ballinger told me—this was the last day that I saw him, and he used this expression—first he was inclined to criticize me, because he seemed to think that I was too easy with the people. He used this expression: "I want the people of Alaska to understand that when they are within their rights the office is their best friend, but otherwise they need expect no quarter." This is practically word for word the expression he used. And he never at

any time, when Jones and I were with him, gave us any idea that he would have anyone protected or that we should shirk any part of the work. Absolutely nothing of the sort ever passed his lips.

Mr. VERTREES. In his letter of December 2, 1907, Mr. Jones, as special agent, reporting in writing to Mr. Glavis, on page 597, among other things, says this [reading]:

About this time I had met Mr. H. K. Love, special agent, located in Alaska, and I took him to Judge Ballinger's office and introduced him to the judge. Mr. Love was desirous of prolonging his stay in Seattle for family reasons, and it was agreed that he should assist in the investigation of these entries. He took the affidavits of quite a number of persons, some of them prominent business men of Seattle, and I took several. We then went to see Judge Ballinger and told him how we were getting along. He and Love seemed to think that it would not be right to disturb the title of any of these lands, upon which large sums of money had been spent and various small investors had risked their money. The judge then asked how long it would take to complete the investigation. I said that if it were carried out properly every applicant for lands would have to be interviewed and that if I were the only person working on the case it would take six months or more, as the applicants are scattered from Nome, Alaska, to West Virginia. Judge B. then said that if the law was so construed as to prevent a number of men, with the intention, in good faith, of developing his Alaska coal land, from acquiring title to more than 640 acres, in case of corporations or companies, that have expended \$5,000 in improvements, or 160 acres in cases of an ordinary association of men, he was going to see what Congress could do about the matter this winter. He said that he thought that the laws relating to coal lands in Alaska should be changed anyhow, and he wished me to get data concerning each group of entries (see my report) for said lands so as to enable him to speak intelligently before Congress.

Now, as to the statements there, the judge and you seem to think it would not be right to disturb the title to any of these lands, on which large sums of money had been expended and various small investors had risked their money. Did Judge Ballinger make that statement?

Mr. LOVE. No, sir.

Mr. VERTREES. Did you?

Mr. LOVE. No, sir.

Mr. VERTREES. That conversation did not take place?

Mr. LOVE. No, sir. We might have spoken, and we certainly did speak, of the fact that they would, and as to the unfortunate character of it, but not that it was not right under the law.

Mr. VERTREES. Some question has been made as to your activity. Mr. Glavis charged in the letter which is found at page 12 of the Senate document that you were not active. I will ask you to state what you did in the way of reports, in the way of making investigations, in the way of taking affidavits, and in the way of inquiry.

Mr. LOVE. While in Seattle?

Mr. VERTREES. Yes; and in reference to these claims. I mean by "these claims" Alaskan claims?

Mr. LOVE. Well, I examined the Simmons-Christopher, the Greene, the Harriman—if some of them were read over I think I could remember them, one way or another.

Mr. VERTREES. The Doughton group?

Mr. LOVE. The Doughton group.

Mr. VERTREES. What group is that—the Munday?

Mr. LOVE. Munday—that is called the English company, the Munday group. I think that covers them.

Mr. VERTREES. A statement has been made to the effect here before this committee—

Senator SUTHERLAND. I do not think that he completed his answer.

Mr. LOVE. That is all that I recall.

Mr. GRAHAM. The Stracy is in there, and the Chezum.

Mr. LOVE. Well, the Doughton—did I name the Doughton?

Mr. VERTREES. Yes.

Mr. LOVE. Oh, the Stracy—that was before in Alaska. I am speaking now while I was in Seattle only.

Mr. VERTREES. You have just stated that you examined the Harriman group, but I understood you to say awhile ago that by reason of certain kindnesses to your family during your absence that you felt particularly kind toward Mr. Harriman, and therefore did not want to investigate his claims, and asked Mr. Jones to do that.

Mr. LOVE. Yes; and he agreed to, but he left without doing it. I did not consider but what I could do it. It was to avoid it if it could be done; but he left without doing it, so I did it.

Mr. VERTREES. That is the way you came to report on that group?

Mr. LOVE. Yes; it was only a preliminary report.

Mr. VERTREES. Do you recall a conversation between Judge Ballinger, Mr. Munday, yourself, and Mr. Jones?

Mr. LOVE. I recall an interview.

Mr. VERTREES. Well, an interview.

Mr. LOVE. Or a visit; yes, sir.

Mr. VERTREES. State what happened there and then, and all that you did.

Mr. LOVE. Well, I had been with Mr. Munday two or three days, going over his group, otherwise known as the English Company, the Stracy group, and finally we had put it in writing—his story. We went over then to Judge Ballinger's office; Mr. Jones was there, I presume, or else he went over with us, I do not know; anyway he was there, and this statement was read over by the judge and discussed and Mr. Munday was, in my opinion, peculiarly frank in every statement, in the statement that he had already made, and in everything that was said at the meeting. I do not know what in particular you have reference to.

Mr. VERTREES. The particular thing which I want to bring out the statement as to whether or not it was stated there that Mr. Munday made the—whether or not it is true that Mr. Munday made the statement that he proposed to get all the land he could through others as entrymen, or practically through dummy entrymen, and insisted on that, and asked Judge Ballinger for an opinion, but the judge refused to give an opinion on it.

Mr. LOVE. No, sir.

Mr. VERTREES. I refer especially now to the letter of December 2, 1907, which appears on page 5 of the document we call the Senate document, in which Mr. Jones says that that did happen.

Mr. LOVE. No, sir; Mr. Munday had already made his statement that all he ever expected to have he already had, and how he had gotten it—anything but by "fogies."

Mr. VERTREES. What do you mean by "fogies"—dummy entrymen?

Mr. LOVE. I mean dummies. I had gone to a large number of them before going to Mr. Munday, as a matter of fact, and knew who

they were. He said he believed he was within his rights, he and his people, and if so he expected to get the land then filed on, but he did not make any statement that he intended to get all the land he could. The question of dummies was not up; there was nobody claiming that dummies were involved. There was no such discussion on the part of Mr. Jones or anyone else, on the subject of dummies, because as a matter of fact it was not under discussion. That was the A B C's of the whole thing, and if it had been under discussion Judge Ballinger would undoubtedly have been willing to express an opinion, and it could not have been but one opinion; and I would, too. There was never any such talk as Mr. Jones states.

Mr. DENBY. What is a "fogey," Mr. Love?

Senator FLETCHER. "Phony."

Mr. DENBY. What is that term you used?

Mr. LOVE. Well, dummy. "Dummy" is the proper word.

Mr. GRAHAM. You used it inadvertently. You meant "dummy?"

Mr. LOVE. Yes, sir.

Mr. DENBY. I thought it was a colloquialism in Alaska for dummy.

Mr. VERTREES. I wish in this connection to give in evidence that affidavit of Mr. Munday, to which he refers, and ask that it be printed.

The CHAIRMAN. That will be admitted.

Mr. VERTREES. Showing exactly what he did claim and say. It is rather long, and I do not care to read it at present.

(The affidavit referred to is as follows:)

EXHIBIT No. 20.

STATE OF WASHINGTON, *County of King, ss:*

C. F. Munday, being first duly sworn, on oath says that he was one of the original incorporators, and has since about March, 1893, to date been the active representative of the Alaska Development Company. That said company was organized in 1897 for the purpose of drilling for oil, owning and operating coal mines, and so forth; that locations of oil land were made in 1897, 1898, and 1899, and not later, by members of the company and transferred to said company and paid for in company's stock. That in 1898 coal was discovered in the vicinity of the company's oil claims, Kayak recording district, Alaska, and the company, by affiant, secured the survey of some twenty-four tracts of such coal-land, each approximating 640 acres; that this was done with the intent that the said company should enter such if the law allowed such or could be so amended to allow it. That subsequently affiant made a trip to Washington, D. C., and endeavored to secure the passage of an act that would allow of above proceedings.

That in 1899 affiant went to London, England, and there, on behalf of the Alaska Development Co., entered into a lease to MacIver Campbell, representing the Carbon Olea Syndicate, leasing all oil locations by description and all right and title of the Alaska Development Co. to the lands located for coal. This was prior to affiant's trip to Washington above mentioned.

The Carbonolea Syndicate having failed in their undertakings, the lease was forfeited in April, 1900.

In July, 1900, affiant, on behalf of his company, entered into a new lease with V. Gaudil, of London, representing the Alaska Steam, Coal and Petroleum Syndicate. This lease, as the former, covered the company's oil lands at Kayak and right and title to coal lands. This is the certain lease dated July 19, 1900, now of record in the office of the U. S. commissioner, Katalla, Alaska. This lease contains an option of purchase in favor of lessee.

On June 2, 1904, V. Gaudil and above company, A. S., C. & P. S., assigned all interests under above lease to the Pacific Coal and Oil Company, a Canadian corporation. Affiant understands that one-half of said last company is held by the original London syndicate and remaining interests by Messrs. Mackenzie, Mann & Co., of Toronto, Canada.

Up to this time, June, 1904, the London lessees had expended all the funds necessary to meet the assessments required on the oil lands, and had met all expenses

incident to the coal locations (or attempted coal locations), which consisted only in exploration for coal and some small amount of tunnelling.

Subsequent to the passage of act of April 28, 1904, A. H. Stracey, manager for the English company, had the greater part of the land claimed as coal land by affiant's company, surveyed into tracts of 160 acres each, and induced various persons in and about Katalla to file thereon, paying each a consideration therefor, and with agreement that each should deed to a person to be named by said Stracey.

That affiant nor any member of the Alaska Development Co., or any person now claiming coal land at Katalla and represented by affiant, did not authorize this course on part of Stracey or know of such until subsequent to it, and a disclaimer by company was executed to offset any deeds so executed, the company repudiating the locations and transfers in toto.

That subsequently, in 1904, affiant secured power of attorney from some twenty-six stockholders of the Alaska Development Co., to said Stracey for location of the land above attempted to be located under act of 1904; affiant believes locations were made, but that some irregularity occurred. That consequently in 1905 new locations were made by each of above twenty-six of the same tract, but each one taking a different quarter than on previous occasion. That on this occasion one Frank Munday, nephew of affiant, was added to the list.

That these twenty-seven are the locations since then and to date, represented by affiant as attorney and by said Stracey as agent in the land office. That A. W. Shiel will likely be substituted for Stracey, as he has returned to England.

That attached sheet, marked "Exhibit A," shows the original stockholders of the Alaska Development Company, and like sheet, marked "Exhibit B," the coal-land locators represented by affiant.

Except the expenses in 1897, of sending the original party to Alaska to locate the oil and certain coal lands not now covered by locations above described, the Alaska Development Co. has not expended anything on any of the coal lands covered by affiant's clients, nor have said clients made expenditures on such account.

Prior to the final locations in 1904, the money expended and work done were by the English lessee under its lease and with hope of a final interest therein under such. That affiant agreed to reimburse said Stracey for the filing fees incident to the filings made by affiant's clients in 1904.

That in 1905, affiant entered into a verbal agreement with said Stracey as representative of his company by the terms of which said company was to advance the funds necessary for the survey of 1905 and expenses incident to the coal filings at that time and for the continuance of the exploration work on the coal land and for the final survey for patent, this to cover all the representation of the said coal claims necessary and the company to attend to all such survey and work. As consideration for such undertakings, affiant agrees on behalf of the 27 locators that there would be repaid the amounts so expended, together with the value of all development work done by said English company on these 27 locations prior to 1905; that this repayment would be made out of royalty in event of lease and out of selling price in event of sale. The above is the gist of the existing verbal agreement.

Under this agreement the said English company has continued to perform its obligations and has expended under such agreement since and including 1905, per claim, \$800.00 or more—some claims more and some less. That it was peculiarly advantageous for affiant's clients to enter into this agreement with said company for the reason that it had men and tools on the ground and other facilities for the cheaper doing of the work.

That affiant states that each and every one of the twenty-seven locators mentioned can make the required affidavit that each has taken his respective tract for his own use and benefit and not directly for another.

Exhibit C, hereto attached, is a list of all the stockholders of Alaska Development on June 8, 1905, approximately the time when the pending locations were made.

EXHIBIT A.

ORIGINAL STOCKHOLDERS, A. D. COMPANY.

R. C. Johnston, G. T. Barrett, C. J. Erickson, Max Heilbronner, Angel Poul, N. H. Smith, Thos. G. White, F. P. Johnston, Rae C. Johnston, C. J. Newberry, S. E. Goodwin, Clark Davis, J. P. Conway, J. H. Yeates, A. L. Brown, Leta Kinnear, W. W. Jamieson, W. R. Brawley, Wm. J. Dean, C. M. Mackintosh, C. I. Carr, J. S. Folger, Chas. A. Kinnear, L. A. Kinnear, Homer M. Hill, Walter S. Fulton, Alice Munday,

Thas. F. Munday, Louis W. Haller, Scott Calhoun, Wm. Gottstein, Grant Calhoun, R. Eckles, Lillie P. White, J. C. McKnight, P. A. Purdy, W. G. Hamlin, M. L. Pumphrey, G. W. Bragdon, A. L. Cohen, J. D. Gardner, A. J. Kensley, A. C. Miller, F. F. Trowbridge, R. S. Cox, jr., C. G. Davis, J. M. Hamilton, C. C. Cherry, W. J. Bryant, W. G. Rooks, L. E. Barber, A. J. Blethen, jr., S. R. Davidson, R. V. Ankeny, B. V. Wheelock, S. J. Marquis, P. D. Hamlin, F. W. Shillestad, O. W. Crockett, E. C. Damon, Ole Shillestad, Belle Clement, T. J. Hamilton, Ida Cohen, Fred Baxter, A. H. Eddy.

EXHIBIT B.

R. S. Barber,^a Milpitas, Santa Clara County, Cal.
L. E. Barber,^a Milpitas, Santa Clara County, Cal.
J. H. Yeates,^a Port Gamble, Wash.
F. K. Munday,^b Bailey Building, Seattle, Wash.
Scott Calhoun,^a Mutual Life Building, Seattle, Wash.
J. B. Loughary,^a Bailey Building, Seattle, Wash.
Wm. Gottstein,^a 602 Second avenue, Seattle, Wash.
L. W. Haller,^a 635 Queen Anne avenue, Seattle, Wash.
M. F. Wight,^c Bailey Building, Seattle, Wash.
S. R. Davidson,^a 321 Pacific Block, Seattle, Wash.
Stacey B. Emens,^c Lake Washington, Seattle, Wash.
A. C. Miller,^a 401 Seventh avenue, Seattle, Wash.
R. S. Cox, jr.,^a Haller Block, Seattle, Wash.
A. L. Cohen,^a Alaska Building, Seattle, Wash.
J. F. Trowbridge,^a First and Cherry, Seattle, Wash.
E. M. Ratcliffe,^a 115 Yesler way, Seattle, Wash.
Homer M. Hill,^a Pacific Block, Seattle, Wash.
J. M. Hamilton,^a post-office box 43, South Seattle, Wash.
Almira Hamilton,^a 1205 Sixteenth avenue, North Seattle, Wash.
J. D. Gardner,^a 1008 Washington street, Seattle, Wash.
Grant Calhoun,^a Alaska Building, Seattle, Wash.
P. A. Purdy,^a Bailey Building, Seattle, Wash.
R. C. Johnston,^a (since deceased).
Fred H. Baxter,^a care of Kelley-Clarke Company, Seattle, Wash.
Walter S. Fulton,^a Mutual Life Building, Seattle, Wash.
J. P. Conway,^a (since deceased).
W. R. Johnston,^c Bellevue, Wash.

EXHIBIT C.

List of stockholders of record, Alaska Development Company, June 8, 1905.

A. H. Armstrong.....	25	F. G. Hinde-Bowker.....	1,511½
H. H. Armstrong.....	15	Geo. W. Bragdon.....	1
Mrs. A. E. Ayer.....	30	R. T. Bretz.....	37½
Helen E. Ayer.....	20	Jennie L. Brooks.....	16
Josiah E. Ayer.....	20	A. L. Brown.....	165
Samuel E. Ayer.....	20	Lucy M. Brown Shillestad.....	1
Emily Ball.....	6	S. F. Bullard.....	12½
Alice Barber.....	100	Eliza W. Burns.....	40
L. E. Barber.....	207½	Grant Calhoun.....	108½
R. S. Barber.....	625	Scott Calhoun.....	86
Lida Barclay.....	10	MacIver-Campbell.....	38
Geo. T. Barrett.....	235	C. I. Carr.....	165
Peter Bauman.....	35	Max Clericus.....	125
Fred H. Baxter.....	148	George B. Cliff.....	65
Simon Berg.....	1	F. P. Clingan.....	525
Samuel Bissinger.....	200	A. L. Cohen.....	205
A. J. Blethen, jr.....	100	Ida Cohen.....	82½

^a Were among original stockholders A. D. Co.
^b Not connected with A. D. Co. in any way.
^c Bought stock subsequent to organization.

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List of stockholders of record, Alaska Development Company, June 8, 1906—Continued.

Alice E. Condon Griffiths.....	5	R. C. Johnston.....	600
Carrie G. Connick-Friis.....	2	W. R. Johnston.....	156
J. P. Conway.....	294	James Karasek.....	1
T. D. Corlew.....	12	Matthew Karasek.....	1
R. S. Cox, jr.....	165	I. Keiner.....	125
H. P. Cramer.....	3	A. J. Kensley.....	101
John H. Crombie.....	2	Mary Kilfoy.....	25
Henry Curtner.....	284	C. A. Kindred.....	1
Frank Damon.....	124	C. A. Kinnear.....	4124
S. R. Davidson.....	165	L. A. Kinnear.....	166
Carrie G. Davis.....	165	A. Kistler.....	21
Clark Davis.....	66	Mrs. Emma Lapworth.....	10
Ollie Davis Shoudy.....	3	J. M. Larson.....	10
S. T. Davis.....	50	Edward Lewis.....	80
Louis De Haan.....	1	Lelen F. M. Lewis.....	100
Hon. Cecil Edwardes.....	3334	Margaret D. Livingstone.....	6
Geo. Henry Edwardes.....	100	J. B. Loughary.....	131
Stacey B. Emens.....	75	Thos. Lyle.....	66
F. C. Ensign.....	35	Wm. MacKenzie.....	27
C. J. Erickson.....	285	M. K. MacRae.....	15
F. F. Evans.....	124	Thos. E. Maddux.....	50
John A. Evans.....	264	Edward Mahon.....	600
R. T. Evans.....	175	Marie T. Maison.....	200
W. L. Evans.....	865	S. J. Marquis.....	165
F. C. Francis.....	1	F. X. Martin and R. B. Johnson.....	515
J. L. Fuller.....	24	Mrs. R. E. McCarty.....	1
Etta N. Fulton.....	50	J. F. McDonald.....	20
Walter S. Fulton.....	250	George McFarland.....	124
Geo. W. Furry.....	1	Emma G. McKnight.....	50
Mary A. Gaffney.....	10	A. J. McLaren.....	31
J. D. Gardner.....	85	Clara Metzger.....	14
Emma Gaylord (Mrs. F. M. Wil- son).....	1	Jos. Metzger.....	200
A. R. Ginnold.....	3	A. C. Miller.....	171
Mrs. Katherine M. Glenn.....	50	C. A. Monchow.....	10
S. E. Goodwin.....	624	Mary G. Morton.....	3
Wm. Gottstein.....	824	Alice Munday.....	165
Robert D. Gray.....	40	Chas. F. Munday.....	1, 243
C. H. M. Greenwall.....	424	Chas. F. Munday, trustee.....	6
Bessie Grodjinsky Allenberg.....	1	Chas. F. Munday, agent.....	175
Frances V. Grodjinsky.....	1	C. J. Newberry.....	714
Lillian E. Grodjinsky Gottstein.....	3	Mrs. B. L. Newman.....	5
Pauline Grodjinsky.....	1	W. S. Paige.....	3
L. W. Haller.....	824	Chas. Paugh.....	124
Almira Hamilton.....	856	James Peters.....	1974
J. M. Hamilton.....	165	Mary H. Peterson.....	1
Lillian Hamilton.....	10	George H. Pieper.....	8
Maud Hamilton.....	10	Angel Poul.....	261
P. D. Hamlin.....	165	R. F. Powell.....	1
W. G. Hamlin.....	165	E. J. Powers.....	63
W. P. Hammons.....	2	C. S. Preston.....	100
J. E. Hansen.....	100	Mary L. Pumphrey.....	165
Max Heilbronner.....	200	P. A. Purdy.....	255
M. J. Heney.....	1, 5634	E. M. Ratcliffe.....	731
M. J. Heney and E. E. Siegley.....	2, 8254	L. L. Redmon.....	2
Homer M. Hill.....	5	Mrs. Anna Rosenberg.....	80
Annie Hobbs.....	8	Caudace L. Scott.....	160
Frank B. Hoffeditz.....	10	F. W. Shillestad.....	824
Ursula Hoffeditz.....	3	Ole Shillestad.....	824
Jas. H. Howard.....	4	Mary A. Shrimpton.....	10
H. G. Idema.....	50	Mrs. R. B. Skinner.....	6
Frank B. Johnson.....	1	F. E. B. Smith.....	100
Addie L. Johnston Griggs.....	4	Emil Stauf.....	100
Cavie A. Johnston.....	15	A. H. Stracey.....	50
Frank P. Johnston.....	235	J. F. Trowbridge.....	7004
		M. L. Washburn.....	10

List of stockholders of record, Alaska Development Company, June 8, 1905—Continued.

Edward Welton.....	300	L. B. Wiley.....	4
Loxanna M. Wertman.....	5	Women's A. B. H. M. S.....	10
John A. Westberg.....	6	Laura C. Wotherspoon.....	50
L. V. Wheelock.....	1	Wm. Wright.....	25
Willie P. White.....	82½	J. H. Yeates.....	168
Thomas G. White.....	233		
I. F. Wight.....	142½		25,000

This is a true and correct list of stockholders of Alaska Development Company as shown by the records June 8, 1905.

CHAR. F. MUNDAY,
Secretary.

On reading over the foregoing I find some inaccuracies and some matters which in my opinion, should be more fully explained.

In reference to the first filings made in 1898 on these coal lands, it was fully understood by everyone at that time that these filings were of no avail as the inception of title, the idea being simply to hold possession of the lands until Congress should have enacted laws under which titles could be procured, assuming that Congress would in any act which might be passed allow some preference right to persons who were in possession.

When the lease was made in 1899, and the subsequent lease in 1900, it was understood that these leases, so far as they affected the coal lands, were subject to the acquisition of these lands by the Alaska Development Company. The Alaska Development Company did not in any way bind itself to procure title to the lands, but simply undertook that if it could and did procure such titles the lands would come under the lease.

As to the locations procured to be made by Mr. Stracey in 1904, affiant has no personal knowledge as to what payments may have been made by Mr. Stracey to the locators nor as to what agreements may have been entered into with the locators to lead these claims after location. The statement made on page 3 is made on information and belief. It is my understanding that payments of some kind were made to these several locators and that there was at least an understanding that they would execute deeds. While I have never seen the deeds from these locators to the Alaska Development Company, it is my information that such deeds were made and were recorded.

Affiant further says that the act of April 28, 1904, was construed by affiant and by other attorneys to allow the assignment of any number of coal locations to one company prior to patent and the patenting of the same by and in the name of the one assignee. Prior to the ruling of the Land Department that this could not be done affiant, on behalf of the Alaska Development Company, intended to proceed under his interpretation of the law, and did take some of the earlier steps in 1904 with this end in view.

After the interpretation put upon this act by the Land Department came to the knowledge of affiant it was apparent that the Alaska Development Company could not obtain title to these coal lands, and then affiant determined to put his friends in the way of securing claims for themselves, and under this intention the locations of 1905 (the pending locations) were made.

The lessee company was not advised by me fully as to my intentions in this regard at first, as I did not then have the money in hand to pay the necessary first expenses of making these locations, and really used the lessee company as a means to that end. Subsequently I submitted to said lessee company the proposition to reimburse them these expenditures and such further advances as might be required, as well as amounts paid out on the ground prior to the making of the locations. This was taken up first orally with Mr. Stracey, and subsequently I think upon the suggestion of Mr. Shiels, who succeeded Mr. Stracey, that there should be some writing to this effect, I addressed a letter to Mr. Shiels, in which I outlined the substance of this agreement. I stated that it was apparent that what had been done on these lands prior to the pending locations had benefited the lands, and that such benefit would inure to the several locators, and in consideration of that fact and of the further advances they would repay the value of such work, as well as the advances made in connection with the pending locations, such repayment to be made out of royalty in case of lease or out of whatever might be realized in case of sale.

I also proposed to secure such repayment by mortgage on the several claims, and expressed a willingness, if it could be done, to make leases allowing the royalty to be applied on the mortgage until the mortgage debt was paid.

The lessee company having on the ground in the working of the oil claims men, material, tools, supplies, houses, etc., was in a position to do whatever work was required on the coal claims much more cheaply than affiant could secure the same done by any one else. The lessee company was no doubt largely influenced to enter into the agreement as to future advances by the agreement on my part to repay the value of work theretofore done, which there was then no legal obligation on any one's part to repay, and was also no doubt influenced by the promise which I made, that I would strongly advise my clients when they were in a position to deal with their several claims, to give the Alaska Development Company and the lessee company the first chance to lease or buy the claims and on terms more favorable than to any one else.

I have at all times and frequently stated to the representatives of the lessee company that there was no agreement or understanding of any kind, verbal or written, express or implied, on the part of any of my clients to sell or lease his claim to the lessee company or to any one else, and that there would be no such agreement or understanding at any time other than the moral obligation that might exist to give the Alaska Development Company and the lessee company a better chance than any one else, because of the large expenditure already made by them at a time when all parties were under the honest belief that the Alaska Development Company could lawfully acquire these claims.

In reference to the locations procured to be made by Mr. Stracey in 1904, I find that my first statement was in some particulars erroneous. Upon further thought my recollection is that after these locations had been made and prior to the recording of the deeds to the Alaska Development Company (whether before the making of the deeds I am not sure) I ascertained what had been done. I realized that there was always doubt as to whether the Land Department would place the same construction upon the act of April 28, 1904, that I did, and desiring, if the department should hold that transfers to one company of a number of locations could not be made, that my friends should secure these lands rather than that they should be secured by other persons, I insisted upon the location certificates and deeds being properly recorded so that the Alaska Development Company could disclaim, and so that the record might show its right to disclaim, and thus clear the way for locations by my friends.

It is true my full purpose in insisting to Stracey on some of these points was not fully disclosed to him, for I was not certain how far I could depend upon him to carry out my wishes if he should know the end I had in view.

My intention was to secure these lands for the Alaska Development Company, under the law as it then stood, or as we might procure it to be amended, would permit, and if that could not be done, then to put my friends in the way of securing them for themselves. It was, and it is now, my desire, if it can lawfully be done, or the law is so amended that it can be done, to secure this coal land for the Alaska Development Company, and if that can not be done because the law will not permit it, then that my friends, if possible, shall have them, always, however, within the law. If on these facts it is prohibited that the present locators shall acquire these lands and the department shall so hold, I shall at once advise them to that effect, and I am satisfied that they will at once take all such steps as may be necessary to relinquish their claims. Neither they nor I have any wish to evade the laws or to acquire these lands in violation of the law.

I honestly believe that these locations are legally within the letter and the spirit of the law. However, that is of course a question for the Land Department to determine, and if the decision be adverse to their locations, that would end the matter so far as they and I are concerned.

As to why I selected the particular persons I did out of the 174 stockholders of the Alaska Development Company to make the 1905 locations. There were a number of reasons, differing as to different persons. Some were special friends whom I desired to benefit; some were special friends of R. C. Johnston, the president; some had aided us in paying necessary expenses incurred in and about the business of the Alaska Development Company; some had been strong supporters of ours when difference of opinion had at various times arisen as to the policy to be pursued by the Alaska Development Company in dealing with the lessee, and, furthermore, I was satisfied that if I could procure the passage of an act of Congress under which the Alaska Development Company could lawfully secure these lands, they would be guided by my advice as to what they ought to do.

I have explained to them all that there is no obligation, understanding, or agreement on their part to convey these claims to anyone—Alaska Development Company or anyone else. I do not mean by this simply no legal and binding agreement

t no agreement or understanding of any kind enforceable or otherwise. Probably I have not made this explanation as clear and explicit as I shall have to before the final affidavit is signed, but when that affidavit is presented, each locator will have full, clear, and explicit explanation of the law and the rulings of the department, and it will be "put up to" the conscience of each locator whether he signs it or not. Personally I see no reason why each locator can not honestly and conscientiously sign the final proof affidavit.

If he thinks the moral obligation which may exist to deal more favorably with the Alaska Development Company and the lessee company is such as to prevent him from signing the affidavit, then so far as I am concerned my advice to him will be to decline to sign it and to allow his location to lapse. But there certainly is no reason why each locator can not with a clear conscience swear that he makes his entry for his own use and benefit and not directly or indirectly for anyone else.

I have no arrangement or agreement with any of these twenty-seven persons as to any compensation. I have not felt that any was necessary, for I know each one would volunteer to pay me more than I should probably charge, and if he did not I could very easily collect on a quantum meruit basis what my services were worth.

If the department should at any time desire any further or more detailed information as to any of these matters, I will very gladly furnish the same, if within my power. I have nothing to conceal, and no wish to evade or try to "get around" the law. If what I have planned can be accomplished lawfully and openly and "above board" I want to do it; if the department should hold that what is being done is prohibited, I want to be so advised at as early a date as possible, so that no more expense shall be incurred

CHAS. F. MUNDAY.

Subscribed and sworn to before me this 8th day of August, 1907.

H. K. LOVE, *Spl. Agt., G. L. O.*

Mr. VERTREES. You may examine Mr. Love.

Mr. BRANDEIS. Mr. Love, were you not in error when you stated that you met Mr. Jones early in July, 1907?

Mr. LOVE. No, sir; I think not. My recollection of dates is correct, I think.

Mr. BRANDEIS. Now, let me call your attention to the fact that Mr. Jones did not return from Alaska until the evening of the 20th of July; that is, he returned that evening instead of the morning that he came to see you, which was Sunday, and that Sunday was the 21st of July.

Mr. LOVE. All right. What did I say, the early part?

Mr. BRANDEIS. You said early in July, and I thought you had inadvertently stated it incorrectly.

Mr. LOVE. That is just my recollection, that is all.

Mr. BRANDEIS. Now, you had some feeling about Mr. Jones being put in there to supersede you, did you not?

Mr. LOVE. Yes, sir.

Mr. BRANDEIS. And you afterwards stated in a letter to the office: "I feel keenly the assignment of Jones. What man would not, especially without a word of explanation from the office to me?"

Mr. LOVE. Yes, sir.

Mr. BRANDEIS. That expresses it accurately, does it?

Mr. LOVE. Yes, sir.

Mr. BRANDEIS. And then when, later in January, 1908, you received a letter from Mr. Glavis, who had then been given charge of the Alaska cases, you felt also considerably aggrieved at that, did you not?

Mr. LOVE. Not at him, nor at Jones, you understand, but at the fact; yes, sir.

Mr. BRANDEIS. And you expressed it, "You will permit me to say I was greatly surprised to receive such information and such an order other than from the office direct."

Mr. LOVE. Certainly.

Mr. BRANDEIS. There was some little feeling when you got that letter?

Mr. LOVE. Not to Glavis; no, sir; to the office.

Mr. BRANDEIS. You had some doubt whether you would write Glavis at all, did you not?

Mr. LOVE. Officially; yes, sir; and give up my record, certainly.

Mr. BRANDEIS. Now, the letter that you referred to as having been received from him is that letter of January 4?

Mr. LOVE. That is the letter.

Mr. BRANDEIS. That has not been introduced, and should be.

The CHAIRMAN. It will be admitted.

(The letter referred to is as follows:)

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE.
Portland, Oreg., January 4, 1908.

Mr. H. K. LOVE,
Special Agent, G. L. O., Juneau, Alaska.

SIR: I have to advise you that I have been placed in charge of investigation of all matters relating to Alaska coal lands, and the commissioner has advised me that you will perform such services in regard to such cases as I may direct, reporting to me in the premises. Until further advised you will please take no action in said cases, and upon receipt of this letter kindly furnish me with all the data you have secured and any information which you may have knowledge of relating to the same.

Very respectfully,

— — — — —, *Chief Field Division.*

Mr. BRANDEIS. You could not but feel some little resentment when you were superseded in that way.

Mr. LOVE. To the office?

Mr. BRANDEIS. Well, to some one.

Mr. LOVE. That is your opinion, sir.

Mr. BRANDEIS. Did you not feel resentment?

Mr. LOVE. To Glavis; no, sir.

Mr. BRANDEIS. I am not asking you to whom, but I ask you whether you did not feel resentment?

Mr. LOVE. I have already answered that, that I certainly did.

Mr. BRANDEIS. Why were you superseded?

Mr. LOVE. Do you want to know?

Mr. BRANDEIS. Yes.

Mr. LOVE. It was because Jones had been peddling a lot of lies about me to Commissioner Ballinger the year before when we worked together.

Mr. BRANDEIS. How do you know that?

Mr. LOVE. Because I know, and am here to tell about it.

Mr. BRANDEIS. You never had seen Jones before the 21st of July, 1907, had you?

Mr. LOVE. He got powerfully busy directly after that, apparently.

Mr. BRANDEIS. I asked you why you were superseded? Were you not superseded by his letter of the 21st of June, written a month before he ever saw you?

Mr. LOVE. No, sir; I was not superseded; not by any manner of means.

Mr. BRANDEIS. Was he not put in there in charge of the Alaska cases?

Mr. LOVE. I have never seen his instructions.

Mr. BRANDEIS. I will show them to you.

Mr. LOVE. All right.

Mr. BRANDEIS. You will find them, Mr. Love, on page 22 of the chronological list of letters and documents.

Mr. LOVE. That refers to the Matanuska coal, which is about 300 miles from the Katalla coal field.

Mr. BRANDEIS. That is, it does not refer to the Katalla coal fields?

Mr. LOVE. Not in the way I read it; no, sir. Duffield's letter refers to the Matanuska coal field only.

Mr. BRANDEIS. Duffield's letter may, but was it confined to Duffield's letter?

Mr. LOVE. It says White's and Duffield's and in that locality, which would be Matanuska.

Mr. BRANDEIS. Is that the limit of it?

Mr. LOVE. That is the way I read it.

Mr. BRANDEIS. Suppose I read you this:

It is desired by this office that you make a thorough, complete, and energetic investigation of the charges contained in Mr. Duffield's letter and those referred to in Mr. White's affidavit, and any other like violations of the law in reference to coal entries in that locality.

Mr. LOVE. That locality; yes, sir.

Mr. BRANDEIS (reads):

This you will do to the exclusion of any other business, and you will confine your efforts to these cases until such time as you have thoroughly covered the whole field of investigation.

Now, you say that he had not anything to do with the Bering field?

Mr. LOVE. Not under that Duffield letter. The Duffield letter referred to the Matanuska field.

Mr. BRANDEIS. Not under the Duffield letter, but he did not get anything under the Duffield letter; he got it all under the letter of June 21, 1907. I guess you have not read the whole letter, have you?

Mr. LOVE. I read what seemed to apply there.

Mr. BRANDEIS. Was the Munday group—

Mr. VERTREES. Mr. Brandeis, I think you are confusing things. It was Mr. Glavis who superseded him, which was in December. I do not understand that there is anything in this letter—

Mr. BRANDEIS. I believe that this letter put this investigation in Mr. Jones's hands, which in the first place superseded him, and did not this witness testify himself that in August—

Senator FLINT. Mr. Chairman, I object to any argument and suggest that counsel ask the witness questions.

Mr. BRANDEIS. I am answering Mr. Vertrees.

Senator FLINT. I do not care about that; I want you, as far as I am concerned, to go on and ask the witness questions.

Mr. BRANDEIS. I think, Senator, that that is very proper, but I think I ought to be protected from interruptions if that is so; and I hope that hereafter you will protect before there is occasion for me to answer.

Senator FLINT. I will try to do it.

Mr. BRANDEIS. Very well. The Munday group is not Matanuska, is it?

Mr. LOVE. No, sir. Now I can explain it all, as a matter of fact.

Mr. BRANDEIS. The Harriman group is not Matanuska, is it?

Mr. LOVE. No, sir.

Mr. LOVE. Certainly.

Mr. BRANDEIS. There was some little feeling when you got that letter?

Mr. LOVE. Not to Glavis; no, sir; to the office.

Mr. BRANDEIS. You had some doubt whether you would write Glavis at all, did you not?

Mr. LOVE. Officially; yes, sir; and give up my record, certainly.

Mr. BRANDEIS. Now, the letter that you referred to as having been received from him is that letter of January 4?

Mr. LOVE. That is the letter.

Mr. BRANDEIS. That has not been introduced, and should be.

The CHAIRMAN. It will be admitted.

(The letter referred to is as follows:)

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Portland, Oreg., January 4, 1908.

Mr. H. K. LOVE,
Special Agent, G. L. O., Juneau, Alaska.

SIR: I have to advise you that I have been placed in charge of investigation of all matters relating to Alaska coal lands, and the commissioner has advised me that you will perform such services in regard to such cases as I may direct, reporting to me in the premises. Until further advised you will please take no action in said cases, and upon receipt of this letter kindly furnish me with all the data you have secured and any information which you may have knowledge of relating to the same.

Very respectfully,

_____, *Chief Field Division.*

Mr. BRANDEIS. You could not but feel some little resentment when you were superseded in that way.

Mr. LOVE. To the office?

Mr. BRANDEIS. Well, to some one.

Mr. LOVE. That is your opinion, sir.

Mr. BRANDEIS. Did you not feel resentment?

Mr. LOVE. To Glavis; no, sir.

Mr. BRANDEIS. I am not asking you to whom, but I ask you whether you did not feel resentment?

Mr. LOVE. I have already answered that, that I certainly did.

Mr. BRANDEIS. Why were you superseded?

Mr. LOVE. Do you want to know?

Mr. BRANDEIS. Yes.

Mr. LOVE. It was because Jones had been peddling a lot of lies about me to Commissioner Ballinger the year before when we worked together.

Mr. BRANDEIS. How do you know that?

Mr. LOVE. Because I know, and am here to tell about it.

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Mr. BRANDEIS. Very well. The Munday group is not Matanuska, is it?

Mr. LOVE. No, sir. Now I can explain it all, as a matter of fact.

Mr. BRANDEIS. The Harriman group is not Matanuska, is it?

Mr. LOVE. No, sir.

Mr. BRANDEIS. He says:

In addition thereto I inclose you copies of letter of Henry R. Harriman, attorney at Seattle, Wash., dated October 10, 1905, to Mr. Love; a copy of the letter of inquiry of November 14, 1906, from George F. Mundy, Seattle——

Mr. LOVE. I did not read that.

Mr. BRANDEIS. I thought you did not.

Mr. LOVE. I read this part down here.

Mr. BRANDEIS. I merely wanted to correct you.

Mr. LOVE. I understand.

Mr. BRANDEIS. And what you did really take up when you became assistant to Mr. Jones in July and August, 1907, was the Katalla group, was it not?

Mr. LOVE. Yes, sir.

Mr. BRANDEIS. And the report which he made and which you refused to sign related wholly to the Katalla or Bering field groups, did it not?

Mr. LOVE. Wait a moment; let me think. The report is there.

Mr. BRANDEIS. If you desire to look at it, I would be glad to hand it to you. The report is on page 27, and the supplemental report of August 13 is a few pages afterwards. That is the report of August 10.

Mr. LOVE. Now, do you mean that this confines itself to the Katalla group?

Mr. BRANDEIS. No; I do not.

Mr. LOVE. What was the question?

Mr. BRANDEIS. You said that it did not extend to the Bering field, it was a Katalla group, and I asked you whether you were not mistaken.

Mr. LOVE. No, sir; the paragraph that I read here did not extend, but we certainly worked almost entirely in the Katalla field, but not entirely.

Mr. BRANDEIS. As a matter of fact, that report of August 10 is confined to the Katalla group, is it not?

Mr. LOVE. No, sir.

Mr. BRANDEIS. Which part of it is not Katalla?

Mr. LOVE. The Watson group.

Mr. BRANDEIS. The Watson group is the Matanuska?

Mr. LOVE. Yes, sir.

Mr. BRANDEIS. And that Watson group has one single exhibit, No. 16, out of the 25 that were handed with that report?

Mr. LOVE. I answered your question.

Mr. BRANDEIS. Is that not so?

Mr. LOVE. I would have to look it up. I could not answer your question without knowing.

Mr. BRANDEIS. Look it up and see.

Mr. LOVE. I believe that is correct.

Mr. BRANDEIS. Now, in view of the fact that this instruction to Mr. Jones was given June 21, 1907, and you never met until just a month later, and Mr. Jones taking charge here of this investigation was not due to any lies he told of you, was it?

Mr. LOVE. It certainly was not, at that time.

Mr. BRANDEIS. Now, what was it due to?

Mr. LOVE. That is not for me to say. It was a letter from the department.

Mr. BRANDEIS. The fact was a letter from the department with instructions to Jones to make that thorough and complete investigation was a matter of the department?

Mr. LOVE. Yes, sir.

Mr. BRANDEIS. But as a matter of fact what induced the department to do it?

Mr. LOVE. That is not for me to say.

Mr. BRANDEIS. Have you ever heard?

Mr. LOVE. No, sir; except the letter of Duffield there; except what that would indicate.

Mr. BRANDEIS. Would that indicate a criticism of you?

Mr. LOVE. Not of me.

Mr. BRANDEIS. Why was it that some one else—I am not undertaking now, Mr. Love, to say whether those criticisms were justified—

Mr. LOVE. Oh, I understand you.

Mr. BRANDEIS. I am trying to find out what the fact was as to the criticism and the source of that criticism.

Mr. LOVE. Yes, sir; all right.

Mr. BRANDEIS. Now, what was it?

Mr. LOVE. I do not know.

Mr. BRANDEIS. Have you never heard?

Mr. LOVE. No, sir.

Mr. BRANDEIS. You have never heard to this day?

Mr. LOVE. No, sir.

Mr. BRANDEIS. Perhaps I may be able to give you some information.

Mr. LOVE. All right.

Mr. BRANDEIS. You remember the soldiers' additional homestead lands in which Clark-Davis made application?

Mr. LOVE. Yes, sir.

Mr. BRANDEIS. Under date of May 2, 1907—you remember Bailey, who was one of the men who made protests there?

Mr. LOVE. Yes, sir.

Mr. BRANDEIS. And others besides Bailey or Lambert, Chase, Campbell, Lane, Hansen, and Smith—they filed protests with the office?

Mr. LOVE. Very likely. I remember Bailey.

Mr. BRANDEIS. That was under date of September 4, 1907?

Mr. LOVE. What date did you say?

Mr. BRANDEIS. That was under date of September 4, but the Bailey protest is under date of May 2, 1907.

Mr. LOVE. Oh, all right.

Mr. BRANDEIS. I call your attention to this to see whether you have ever heard of it. In a letter of Bailey to the Commissioner of the United States Land Office he says:

I take this means of protesting to you and through you against the issuance of title to that tract or parcel of land included in survey 147, commonly known as the town-site of Katalla, or homestead entry by one Clark-Davis, for the following reasons—

And then the last paragraph. That may all go in, but I will only read this.

Mr. LOVE. You had better read it all.

Mr. BRANDEIS. I am willing to do so if the committee desires it. but this is the part that has reference to it:

I further charge that, to the best of my knowledge and belief, the agent of the land office for the district of Alaska is fully cognizant of the facts as above set forth, and on behalf of myself and others affected I ask that the fullest investigation be given this matter, and that no patent or final title issue pending the same.

Mr. LOVE. Let me have the whole letter, if you are informing me. please.

Mr. BRANDEIS. I am asking whether you heard of that protest!

Mr. LOVE. No, sir.

Mr. BRANDEIS. Now let me read the other one.

Senator FLINT. If the witness desires to have it read, let him do so.

Mr. BRANDEIS. I shall be very glad to do so.

Mr. DENBY. You can hardly find out what the protest is from the way you have read it.

Mr. BRANDEIS. The letter is as follows:

KATALLA, ALASKA, May 2, 1907.

To the honorable COMMISSIONER OF U. S. LAND OFFICE,
Washington, D. C.

DEAR SIR: I take this means of protesting to you and through you against the issuance of title to that tract, or parcel of land included in survey No. 147, commonly known as the townsite of Katalla, or homestead entry by one Clark Davis, for the following reasons:

First. Since the original survey was made some three years or so ago, the confines of this homestead have been extended by interested parties other than a U. S. mineral surveyor for Alaska.

Second. The survey or plat does not show the improvements on the ground at the time the survey was made, notably a cemetery; also other numerous improvements in the way of buildings, etc.

Third. The application for title under the act, has never been advertised on the ground as required by law.

I further charge that to the best of my knowledge and belief, the agent of the land office for the district of Alaska, is fully cognizant of the facts as above set forth, and on behalf of myself and others affected, I ask that the fullest investigation be given this matter, and that no patent or final title issue pending the same.

Very respectfully,

A. S. BAILEY.

Mr. DENBY. Who is Bailey?

Mr. LOVE. Bailey was a laundryman in Katalla, Alaska. He had a laundry about this square [indicating].

Mr. JAMES. What was his character? The fact that he had a small laundry did not make him dishonest.

Mr. LOVE. Bailey had been employed by the Davis people about a year or two, perhaps before, and they had had difficulty. It seems to me now that Bailey was arrested, but I would not be sure; it was some pretty serious difficulty between them, and Bailey told me when I investigated that, that he was going to make Davis all the trouble he could all the time. I heard, of course, that there were complaints made by these people against me, but you stated that it was because of that that I was relieved from the coal investigation. This is the first that I have ever heard of that.

Mr. BRANDEIS. I did not say because; I merely suggested that as a possibility.

Mr. LOVE. Oh, you were going to tell me why I was relieved from the coal investigation.

Mr. BRANDEIS. I wanted to suggest certain possibilities. Now here another letter, dated Katalla, Alaska, September 4, 1907, to the

Department of the Interior, General Land Office, Washington, D. C.,
addressed to Fred Dennett, assistant commissioner.

Mr. LOVE. Yes, sir.

Mr. BRANDEIS. The letter is as follows:

KATALLA, ALASKA, September 4, 1907.

To the DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
Washington, D. C.

FRED DENNETT, *Assistant Commissioner*.

SIR: In answer to yours dated June 6, 1907, will say that Special Agent H. K. Love has been to this place, presumably to investigate the irregularities in the matter of survey No. 147, Clark Davis, soldiers' additional homestead scrip. We beg to say that whilst here Mr. Love was a guest of Mr. Clark Davis and took no action farther than to justify Clark Davis and himself in their former proceedings, which we consider very unjust to the Government. We understand that a Mr. Jones was appointed since Mr. Love to make a farther investigation. He was met at Seattle by Mr. Davis and Mr. Love, and as he has not been to Katalla up to date we presume he must of been hypnotized.

We would suggest that a man be sent who is not familiar with the matter.

We are procuring evidence which will be sent direct to the department in the very near future. In the meantime we trust and pray that your department will send a man who is qualified to make a proper investigation irrespective of parties interested, and if the gentleman who you send to make the investigation will call on we the undersigned citizens of Katalla, Alaska, we will furnish such evidence as we may have at hand, irrespective of those concerned.

Trusting action looking to patent of said entry will be suspended pending further investigation, we remain, yours, respectfully,

A. S. BAILEY.
O. E. LAMBERT.
BEN CHASE.
THOS. W. CAMPBELL.
T. J. LANE.
O. HANSEN.
JAMES SMITH.

THE NEW PENNSYLVANIA.

KATALLA TOWNSITE.

THE NEW MONTANA.

Alaska's coming metropolis.

Katalla is the terminal of two railroads, and in proportion to its size is the most rapidly growing city on the Pacific coast. Coal equal in extent and quantity to Pennsylvania and Virginia lies a few miles in the interior. Oil of the highest known grade abounds. The vast deposits of the Copper River Valley, the most extensive in the world, all pay tribute to Katalla.

An unparalleled business and investment opportunity.

Town lots for sale only by the owners.

ALASKA PETROLEUM AND COAL COMPANY,
Offices, 751 New York Building, Seattle, or Katalla, Alaska.

Mr. DENBY. It seems to have been written after the change had been made, so that that could not well be instrumental in bringing about the change.

Mr. BRANDEIS. The first one did. It is by this same Bailey. This is a supplemental letter. The other letter was dated May the 2d, 1907.

Mr. LOVE. May I state my connection with that Bailey case?

Mr. BRANDEIS. I have no objection.

Mr. LOVE. This homestead additional entry townsite consists of 35 acres. I had reported in favor of that about August before that first letter of Bailey's was written.

Senator SUTHERLAND. August, 1906.

Mr. LOVE. 1905, I think.

Senator SUTHERLAND. This letter is dated May, 1907.

Mr. LOVE. It would be 1906. I supposed, of course, it had been approved for patent long before. When I received a letter from the department when I was in Valdes to go over and investigate these charges, I went over. I think it is nothing but fair that the committee should call for my report and the findings of the department under that report. It was one of those few cases in life where there were not two sides to it; and the graveyard they speak of there they admitted when I came to inquire that it was never on the survey, and Bailey told me, as I stated a few minutes ago, that he was going to make all the trouble he could all the time; so he made these complaints. He said that I was the guest of Clark Davis. I spoke of that some time ago. I went over there at that time. It was what we call "open house" in Alaska. Every saloon, or practically every saloon, was a dance hall. It was either to stop with Davis or to live over a dance hall. The Government allowed us \$3 a day as per diem, out of which we are supposed to pay for our lodging and subsistence. Davis had a Japanese cook. I paid Davis, under protest, my \$3.

Mr. VERTREES. Under whose protest?

Mr. LOVE. Davis's protest. In fact, I did not pay. I put it on his desk. I knew he would not take it. I left it on his desk and went in to the Jap and handed him \$2. I had paid him the limit that the Government allowed me at the time, and I paid the Jap for whatever was coming—\$2 out of my pocket—so much so that the Japanese told Davis afterwards that that was the American officeholder spending government money in that lavish way. I was not his guest in any proper sense of the word. I paid my way. Nor did I meet Jones at Seattle and help to hypnotize him, as that letter tried to make out. I met Jones, I am certain. I do not think I ever spoke of the Davis affair to him, except that I have stopped with Davis while examining the thing that he was interested in.

Senator SUTHERLAND. Was the entry afterwards investigated by anybody else?

Mr. LOVE. I do not know.

Senator FLINT. Mr. Chairman, I would like to have the witness's report made a part of his testimony.

The CHAIRMAN. Is it here, Mr. Vertrees?

Mr. BRANDEIS. I think it may be among these papers. I have a large number of papers here and am not familiar with them all.

The CHAIRMAN. Mr. Finney, do you know whether it is here?

Mr. FINNEY. I have not seen it.

Mr. BRANDEIS. Mr. Finney, I have the pile of papers, or rather the committee has, and it is here among the papers on my desk. I have not examined all the papers.

Senator FLINT. I ask that Mr. Brandeis be requested to furnish it. (The report is as follows:)

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Seattle, Wash., August 19, 1907.

The Honorable COMMISSIONER GENERAL LAND OFFICE,
Washington, D. C.

SIR: In compliance with your letter "P," 1907-82850, L. E. E., June 6, 1907, directing a full investigation of certain charges made in letter of May 2, 1907, by A. S. Bailey, of Katalla, Alaska, a copy of which was inclosed, protesting against issuance of patent to Clark Davis for tract embraced in U. S. survey No. 147, as a soldier's

additional homestead, and being the townsite of Katalla, Alaska, I have the honor to state that I visited Katalla July fourth, 1907, and some succeeding days.

I interviewed Mr. Bailey, protestant, and secured his sworn answers to questions propounded, as appears by Exhibit "A" herewith as a part of this report.

Also, please find inclosed as parts of this report the sworn statement of Clark Davis, applicant in U. S. survey No. 147, marked Exhibit "B," and that of Torger Asbjornson, marked Exhibit "C." Mr. Davis replies to the charges of Bailey and Mr. Asbjornson, formerly Feed, denies Bailey's statement that he would be adversely affected by issuance of patent.

I also interviewed Angus McCrea, mentioned by complainant, and G. C. Britton, local U. S. commissioner, and others. Mr. McCrea assured me he knew nothing irregular about the survey in question nor any reason for disallowance of patent, and that he had not made the statements alleged by Bailey; that he is of record as a witness to the posting of the required notice, and that Mr. Davis stated to him at the time that the notice was posted in hall so as to preserve it and the plat from the weather.

Mr. Britton did not know of any irregularities. He said he had written the department some months before urging that patent issue; that failure in such would work great injury to the many that have invested extensively in improvement of lots into which the tract has been platted.

All others interviewed agreed in substance with the view of the commissioner.

With regard to the first specification in Mr. Bailey's complaint, the survey referred to is that made by Lovell. As the record shows, this was not official in any sense, nor was any effort made to acquire title thereunder. I take it, therefore, the department will not consider any complaint concerning it.

As shown by answer to question six, complainant admits that there is not any foundation to his second charge.

Complainant's third specification, that notice was not posted on the ground, is in my judgment poorly taken, though there is some small technical ground for it.

Complainant and applicant have stated their respective side of this question. It does not seem to me that Bailey has stated his side with perfect candor. One must consider that Katalla at that time consisted of but ten or twelve buildings, with scarcely a score of inhabitants, and that all knew perfectly well the fact of the pending application, as such things are known in a hamlet. When I visited Katalla in September, 1905, prior to this matter, the first floor of the Davis Building referred to was occupied by him as an office, and it has ever since been so used. It is in the very center of the village, opposite the post-office, and much frequented by all classes; due in part to the hospitality of Mr. Davis, but principally to the fact that he was the chief employer there. The front door opens into a small hall; from this by the only other door you enter the office. It was on the hall side of this door that the notice was posted. Mr. Davis states this was for the purpose of preserving the notice and the accompanying plat. I believe such to be the perfect truth and the only reason, and that no idea existed of deceiving anyone, and that no one was deceived.

So far as Mr. Bailey connects me as "agent of the land office" with the matter, I may be allowed to say that I was first in Katalla in September, 1905, prior to the posting complained of, and not again till April, 1907. Between these dates I had recommended to the register and receiver, Juneau, the allowance of the entry. While there in April, I heard of the posting having been done as shown by the record, and inquired into it and the reasons for it, with the result that it did not justify further action on my part, as I believed.

This seems to be a case of "bad blood." Mr. Bailey said to me that he would do all in his power to harass Mr. Davis and to defeat him where he could. He runs a small hand-laundry and bath establishment at Katalla, but was formerly in Davis's employ, resulting in a rather serious difficulty.

This tract has been platted into lots and constitutes the promising town of Katalla. It is now being rapidly improved by the many that have invested; it is altogether desirable, if it can be done with propriety, that patent be issued at earliest practicable date.

Very respectfully,

H. K. LOVE,
Special Agent, G. L. O.

Mr. BRANDEIS. Mr. Love, do you happen to know that Mr. Glavis investigated these charges against you?

Mr. LOVE. No, sir.

Mr. BRANDEIS. Well, he did.

Mr. LOVE. All right.

Mr. BRANDEIS. And he exculpated you.

Mr. LOVE. All right.

Mr. BRANDEIS. I refer to the letter which has been referred to many times, of November 12, 1907, which appears on page 33 of the record, as follows:

I have the honor to report that on October 29, 1907, I proceeded to Seattle and investigated the case as far as possible in that city. I interviewed Charles D. Davis, son of Clark Davis, and secured his affidavit, a copy of which is hereto attached. I also interviewed W. G. Rogers and Walter French. They all speak in the highest terms of Special Agent Love, and from what they state I am of the opinion that the insinuations made against the said soldier's application can not be sustained by the facts. I presented the said protests to the United States attorney, who is of the opinion that prosecution under amended Revised Statutes 4746 could not be maintained against Bruner, since his charges are based upon "common report and alleged knowledge."

Not on actual facts. That is, he consulted him, did he not, according to that provision, with a view to prosecuting the man who had made these charges against him? In your letter of April 16, 1908, which Mr. Vertrees has read from, and which was an answer to a letter from Commissioner Dennett of April 1, 1908, he stated, after discussing at great length these statements:

I do not wish to do Mr. Jones an injustice. May I respectfully suggest the possibility that his report in the way it comes to me may be given a cast not intended by him. There is, too, a chance that I did not read your letter aright.

Now, it is a fact, is it not, that this report which you call a report and which was really an affidavit of Jones made in pursuance of a request from the department, was not shown to you at all. Was that not true?

Mr. LOVE. It is kind of halfway true.

Mr. BRANDEIS. When was it shown to you?

Mr. LOVE. That is my letter of April 21st [indicating].

Mr. BRANDEIS. Yes; that letter is in evidence already.

Mr. LOVE. Shall I tell you the history?

The CHAIRMAN. Just read that letter of April 21, or let the witness read it.

Mr. BRANDEIS. This is the letter of Mr. Dennett.

Mr. VERTREES. You have no right to state that, Mr. Brandeis.

Mr. BRANDEIS. The chairman has asked the witness to read a letter.

The CHAIRMAN. Go on, Mr. Love.

Mr. LOVE. I have a friend in New York by the name of Dave Goodrich who was a lieutenant in my regiment in Cuba and a very particular friend of the President. In the spring of 1908 I wrote to him asking him to write to the President in my behalf on the marshalship. He wrote me that he had never asked anything of the President, but he would be only too glad to break the rule and that he would do so right away. The next mail to Alaska brought a letter from him to the effect that he had just heard from the President, and I was to have the first vacancy in Alaska. Then about the next mail brought another letter from him saying he had had two letters from Secretary Garfield and one from the President to the effect that because I had done something in Alaska, that he could not make out, I could no longer be considered in line for the marshalship. He said that Secretary Garfield's letter said he was taking it up with Mr. Love directly. He has not done so directly.

The CHAIRMAN. Mr. Loeb?

Mr. LOVE. No, sir; I mean myself—with me.

Mr. BRANDEIS. Who was taking it up with you directly?

Mr. LOVE. The Secretary of the Interior—Secretary Garfield. I was just leaving for the westward when I received this letter from Goodrich. The letter was dated the 4th of March, 1908. I wrote to Secretary of the Interior through the Commissioner of the General Land Office inclosing this letter from Goodrich, asking its return as a private letter—I have not received it yet—saying that I did not know what I had done in Alaska; that I wanted to investigate, and I had promised to ask no quarter. I went west for about thirty days, and after I returned to Juneau, about ten days after I returned to Juneau—mind, I had sent this through the Commissioner of the General Land Office, which was not really necessary. When the Secretary of the Interior undertook to criticise me to a friend of mine, I could address him directly, although the rule was to communicate with a commissioner on official matters—but I sent it through the commissioner so that he could know what I was doing, and make his indorsement as he passed it on to the Secretary. I have never heard from the Secretary of the Interior. I have never had an acknowledgment from the Commissioner of the General Land Office of that letter, but I did receive the letter of April 1.

The CHAIRMAN. What is that?

Mr. LOVE. Those charges of Jones. That was the first that I knew that Jones had entertained any such opinion of me, and my letter of the 16th of April is in reply.

Mr. BRANDEIS. Will you allow me one moment, Mr. Love?

Mr. LOVE. Yes, sir.

Mr. BRANDEIS. I think you did not get the question which I asked you. Do you recall the question?

Mr. LOVE. I do not know that I do.

Mr. BRANDEIS. I called your attention to your statement in your own letter, the letter being your letter of April 16, which you recall. In that letter you say, "I do not wish to do Mr. Jones an injustice. May I respectfully suggest the possibility that his report in the way it comes to me may be given a cast not intended by him. There is, too, a chance that I did not read your letter"—that is Commissioner Dennett's letter—"aright." Now, I asked you whether Commissioner Dennett did send you a copy of the report of Jones which you asked for?

Mr. LOVE. No, sir; never to this day.

Mr. BRANDEIS. Have you ever seen it?

Mr. LOVE. Not until I came to Washington and saw it in the records.

Mr. BRANDEIS. When was that?

Mr. LOVE. I have been loafing around here about thirty days now.

Mr. BRANDEIS. And that was the first time?

Mr. LOVE. Yes, sir.

Mr. BRANDEIS. That you saw that letter?

Mr. LOVE. Yes, sir.

Mr. BRANDEIS. Now, did you then learn how that affidavit happened to be sent into the land office?

Mr. LOVE. The records state it.

Mr. BRANDEIS. What is it?

Mr. LOVE. Well, in the first place, it seems that I supposed within three or four days from the time we met he was telling Judge Ballinger his opinion of me while we were working together, and when he knew the circumstances under which I was laboring that summer. The record shows, and his own testimony is, that he told this to the Judge going down the elevator. He finally told it to Glavis, and Glavis reported it and they called on Glavis to get an affidavit from Jones. Let me tell you. When I landed in Portland about the 15th of June, 1908, I had been there a few days when I went to Glavis's office, or Glavis's room. I was under Glavis. Jones was in the same room with me.

Mr. BRANDEIS. When was that?

Mr. LOVE. This was about the middle of June, 1908.

Mr. BRANDEIS. But all of this happened before 1908.

Mr. LOVE. I understand that it did.

Mr. BRANDEIS. I am asking you what happened before.

The CHAIRMAN. Let him finish his explanation.

Mr. LOVE. I want to say that I went on this occasion into Glavis's office and spoke about these reports of what Jones had said about me. Glavis said, "Yes, Jones did say that, but he did not intend that they were to go up." I said it was not a question where they were going to, but whether they were true or not. When Glavis told me that he knew himself that he had sworn Jones to an affidavit, and he knew that he had taken Jones's verbal statement and reported to Judge Ballinger on which that affidavit was called for.

Mr. BRANDEIS. How do you know that?

Mr. LOVE. The record shows it.

Mr. BRANDEIS. That he knew?

Mr. LOVE. Certainly; he reported to the department what Jones had told him, and thereupon the department called upon Jones, through Glavis, to put that in shape of an affidavit, and he knew that although he told me there in his office that Jones did not mean it to go up when he knew Jones had told Judge Ballinger himself, my chief.

Mr. BRANDEIS. How do you know it?

Mr. LOVE. Because he said so in his own testimony—going down the elevator, the first time.

Mr. BRANDEIS. Jones testifies to that in 1910.

Mr. LOVE. Well, Glavis and Jones are thick enough to know what each is doing; each knows what the other fellow is doing.

Mr. BRANDEIS. That is an inference.

Mr. LOVE. It comes pretty near being right, though.

Mr. BRANDEIS. You refer to letters; you have assumed that these charges against you, and the feeling you have about it, is that these charges attack your integrity; is that not so?

Mr. LOVE. I certainly do.

Mr. BRANDEIS. Did not Mr. Glavis expressly state that there was no charge against your integrity?

Mr. LOVE. And would his bill of health be enough to suit me? Not on your life.

Mr. BRANDEIS. I do not know that it would. I ask you whether it is not the fact that that was the precise thing he reported?

Mr. LOVE. Oh, in a little dinky thing that happened out there and had nothing to do with this coal business.

Mr. BRANDEIS. What do you refer to now?

Mr. LOVE. I refer to the Clark-Davis homestead that he was investigating.

Mr. BRANDEIS. But did it not go beyond that?

Mr. LOVE. No, sir.

Mr. BRANDEIS. We will see.

Mr. LOVE. Whatever he said about what he had heard about my standing, and all that would not cut any ice with me, coming from him.

Mr. BRANDEIS. You seem to have some feeling against Mr. Glavis?

Mr. LOVE. I do not deny it.

Mr. BRANDEIS. Why have you any feeling against him?

Mr. LOVE. Do you want me to tell you that?

Senator FLINT. Yes; go ahead and tell it.

Mr. BRANDEIS. Yes; let us hear it.

Mr. LOVE. All right. I was in Juneau, Alaska, about to go into the interior for several months, and would have been ten days or two weeks on the way, when about the 15th of June—I will call it that date—

Mr. BRANDEIS. What year is this?

Mr. LOVE. 1908; I got a telegram from him to "come to Portland at once with your record." I went to Portland with the records and after being there a day or so I wanted to know what I was there for. "Why, you are here to make your headquarters here." "Oh, no," I said, "I am not; I am going to be United States marshal up in Alaska." And I showed him a telegram to that effect, "but," I said, "I have served in the army; I have been an officer in the army and know what army officers are; they are supposed to be all around, but I never knew of an officer being ordered to move from post to post on any such telegram as you have sent me—'come to Portland with your records.'" I went there not at all prepared for work. If I had not already arranged for my family for three or four months I would have been in a bad fix; and I considered it thoroughly inconsiderate and unfair. After that, as I have said—I did not know it at the time—it turns out that he deceived me on the question of the Jones affair, because he told me that Jones did not intend to go up when he knew that he had sent it up direct, and he did not let me know that he had had anything at all to do with it.

Mr. BRANDEIS. Let me ask you whether you know this is what happened: On January 22, 1908, Mr. Glavis, in a letter on page 72 of the record, in which he requests that the clear listing of the Cunningham cases be held up, stated as follows:

While in the office last month, I was directed to take charge of all the Alaska coal cases, among which were the foregoing entries, and by your letter, December 28, 1907, you directed me to advise Special Agent Love that he would do only such work upon the coal cases which I deemed it advisable for him to perform. Feeling that that matter was left entirely to my discretion, I immediately directed Mr. Love to take no further action unless otherwise directed. I did this because it was quite generally known that Mr. Love is an active candidate for appointment to one of the United States marshalships in Alaska, and while not questioning his integrity, still his judgment is likely to be a little warped.

Had you ever heard of that paper?

Mr. LOVE. Oh, yes; I read that since I have been in Washington, too.

Mr. BRANDEIS. Do you want to read the rest of it?

Mr. VERTREES. Yes; let him read the rest of it.

Mr. BRANDEIS. You read it all, did you?

Mr. LOVE. I guess so; I read enough.

Mr. BRANDEIS. Then you may perhaps remember that there was a letter on March 14 from Mr. Dennett to Mr. Glavis, requesting that he make a report on this matter with respect to you. Do you remember that?

Mr. LOVE. I do not know the date. I know that he was directed to get an affidavit in detail and circumstantially, etc., from Jones, which he did.

Mr. BRANDEIS. You refer to the letter of March 14, 1908, that appears on page 56?

Mr. LOVE. I have read since I have been here. That is all I know about it.

Mr. BRANDEIS. And you also know, do you not, that this affidavit which Jones made was made in pursuance to the request which came from the General Land Office in that letter of March 14?

Mr. LOVE. Well, I would not answer that the way you want me to.

Mr. BRANDEIS. I want you to answer it in accordance with the truth.

Mr. LOVE. The cause of it was the statement that he had made to the Judge long before and to Glavis, which Glavis had reported.

Mr. BRANDEIS. Yes; but Mr. Glavis was requested on March 14, by this letter on March 14, and the affidavit that was actually made by Jones was an affidavit made in pursuance to that request.

Mr. LOVE. Oh yes, sir—yes.

Mr. BRANDEIS. Now, I would like to take up that affidavit with you for a moment. It appears on page 796 of the record. That affidavit states as follows:

He mentioned H. R. Harriman in particular as being a friend of his. Mr. Harriman was the representative of the Clark-Davis group of entrymen who were located on Alaska coal lands by one A. B. Hunt as attorney in fact.

Now, it was a fact, was it not, that you expressed a desire that Mr. Jones should take Mr. Harriman's affidavit rather than yourself?

Mr. LOVE. Yes, sir.

Mr. BRANDEIS. Was that a reflection upon your integrity?

Mr. LOVE. That is the way the commissioner put it.

Mr. BRANDEIS. I am not asking you the way the commissioner put it, but I am asking you whether it is a fact that the statement, or the suggestion, whether it came from you or not, whether from him, or as a result of a conversation that Jones should take Harriman's affidavit, was a reflection upon your integrity in view of the close friendly relations?

Mr. LOVE. Well, I asked him to on that account.

Mr. BRANDEIS. He said that was a fact, did he not?

Mr. LOVE. Yes, sir.

Mr. BRANDEIS. Did he not state that was true?

Mr. LOVE. Well, I would have to read the rest of it.

Mr. BRANDEIS. I will read you just what he says:

I was in Seattle, Wash., with Mr. Love, from July 22, 1907, to July 29, 1907, and during that week and in the early part of same, Mr. Love, in commenting on this case that we had, remarked that he was glad he did not have to investigate the Alaska coal cases, because he had to live up there and he did not desire the enmity of the people, some of those involved being his friends.

Then follows the passage I have asked you about, as follows:

He mentioned H. R. Harriman in particular as being a friend of his. Mr. Harriman was the representative of the Clark-Davis group of entrymen who were located on the Alaska coal lands by one A. B. Hunt, as attorney in fact.

Now, I ask you whether it was not rather a sign of integrity and delicacy of feeling that you did want Mr. Harriman to be examined by someone else?

Mr. LOVE. Oh, it would hardly be proper for me to answer that.

Mr. BRANDEIS. Well, I am asking you, and consequently it would be proper.

Mr. OLMSTED. Mr. Brandeis, what difference does it make whether he thinks so or not? How does that help the committee any?

Mr. BRANDEIS. I believe it will help the committee quite as much as some of the other matters that have been put in in connection with it.

Mr. OLMSTED. That is quite likely.

Mr. BRANDEIS. I desire to show what this deposition is, and this statement of Mr. Jones, to show it from this witness, who has been characterizing it.

Mr. OLMSTED. We have the right to construe it for ourselves.

Mr. BRANDEIS. I thought you would like to have it construed by an outsider.

Mr. JAMES. He said that this man Jones had been peddling lies about him, and certainly an affidavit which he made ought to be interrogated closely in view of the searching and complete denunciation that he made of him on the stand.

Mr. BRANDEIS. Would you rather not answer that question?

Mr. LOVE. I understood you to ask me whether I thought it was a proper thing to ask Mr. Jones; was that the question?

Mr. BRANDEIS. Yes, rather than reflecting upon your integrity it was evidence of your delicacy of feeling.

Mr. LOVE. I said I ought not to answer it because I asked it for that reason; that is all.

Mr. BRANDEIS. Now, let us take the next statement he makes:

Mr. Love also said that he would rather I would go to see Ignatius Mullen, the son of the receiver of the Juneau (Alaska) land office, in regard to his coal land, because he had to work right along with Mullen at Juneau at the land office—

That is the father, I assume—

and it would be very hard and disagreeable if he and Mullen could not get along together, and that if he went after Ignatius Mullen to investigate his entry his father, P. M. Mullen, might think that he had started the investigation of his own accord.

Now, I ask you whether it is not a fact, perfectly consistent with your integrity, and a natural suggestion, having a regard for the conduct of the business of the Government which you were there to observe, that you should not unnecessarily want to break those relations with the receiver which must be friendly in order that the business be done to the best advantage of the Government. Is that not so?

Mr. LOVE. Will you let me ask you a question?

Mr. BRANDEIS. No; only the committee have that privilege.

Mr. LOVE. That proposition is right, but if so why did he put it in the affidavit there—all of this, if it was right? If I was right and he meant to convey that idea to the department why did he put that in that affidavit?

Mr. BRANDEIS. I think in spite of my injunction—

Mr. LOVE. Please read it in connection with the last two lines of that paragraph and you will see why he did it.

Mr. BRANDEIS. In spite of my injunction you have undertaken to ask me a question. What I asked you was whether it was not a fact that as you and Mr. Jones were both at work upon these Alaska coal cases your position was very tenable, if it was your position—

Mr. LOVE. It was.

Mr. BRANDEIS. That the investigation of Mullen had better be made by Jones, who had no other relations with him, than for you who had to live and work with him from day to day. Is that not so?

Mr. LOVE. Officially, yes, sir; but he does not put it that way. He puts it as though I were trying to safeguard my personal relations—disagreeable, etc. Official, yes, sir.

Mr. BRANDEIS. I think that will—

Senator FLINT. Just let the witness finish his answer.

Mr. LOVE. I say that if I were only safeguarding my official relations with Mr. Mullen, I was correct. That was what I was, as a matter of fact, and so explained it to Mr. Jones; but in his statement the way he puts it there, I am looking out for my pleasant personal association with Mr. Mullen, which I was not trying to safeguard.

Mr. BRANDEIS. Did he say that? Now let's see where he stated you were looking out for your pleasant personal relations. Just read what shows there in that deposition in regard to Mr. Mullen, that you were looking out for your definite personal pleasant relations.

Senator SUTHERLAND. What page is that on?

Mr. BRANDEIS. Page 796 of the testimony.

Mr. LOVE. Well, he says it would be very hard and disagreeable if I could not get along with Mr. Mullen.

Mr. BRANDEIS. Well, it would be, would it not?

Mr. LOVE. Officially, yes, sir; it would be, personally; but that was not what I was trying to get at all.

Mr. BRANDEIS. He does not state personally even in that letter, does he?

Mr. LOVE. When you consider that these are supposed to be charges, I say yes.

Mr. BRANDEIS. How do you know they were supposed to be charges; they are supposed to be statements of fact, and I am asking you now whether they are not statements of fact?

Mr. LOVE. No, sir.

Mr. BRANDEIS. What is the "no, sir" answer to; is it not a statement of fact?

Mr. LOVE. The only right way to read that is in connection with the evidence that Mr. Jones gives himself of how he talked to Judge Ballinger right from the start.

Mr. BRANDEIS. Mr. Love, do not get your chronology mixed up.

Mr. LOVE. All right, sir.

Mr. BRANDEIS. This was sent to the department in March, 1908, and Mr. Jones has given no testimony in this matter until February, 1910.

Mr. LOVE. Oh, I understand, but then from that testimony you find out the testimony he had been given like a Black Hand man against me in Seattle in 1907.

Mr. BRANDEIS. I submit that that is not what the committee will do when they interpret this document, if they go according to ordinary rules of evidence. Now, let me look at the next statement he made:

He said—

Meaning by "he" Mr. Love—

He said also that it was a different proposition in Alaska from what it was in the States about making extensive investigations of alleged frauds. That in Alaska one has to eat, sleep, and live with the parties under investigation. That, for instance, in going to Katalla, Alaska, one has to stop at the hotel run by the people who are building up Katalla, the Clark-Davis-Lippy crowd, and that if one made himself disagreeable to said crowd he could not go to some other place and get lodgings like he could in the States, but would have to take anything he could get or sleep out of doors.

Now, is that not an absolutely accurate statement?

Mr. LOVE. Absolutely no.

Mr. BRANDEIS. What is inaccurate in that statement?

Mr. LOVE. I stated that in the early part of my examination here.

Mr. BRANDEIS. I was unfortunate enough not to catch it; let us hear what it is.

Mr. LOVE. When I went up to Katalla it was a railroad-building town at that time, and every hotel—as a matter of fact, the Davis people were not running a hotel, it was his private house, and the hotels were over saloons, and it was either to stop over a saloon—now this is only the lodging, mind you; the restaurants were different. He says there that I told him I had to eat with them as well as lodge.

Mr. BRANDEIS. Well, now will you—

Mr. LOVE. I told him—in fact I did not go into any great detail with him—but I told him at one time I had even lived with the man I was investigating, and I told him that it was—

Mr. BRANDEIS. If you will carefully follow the sentence I have read to you, you will see that Mr. Jones does not even charge you with having stopped that once with the man you were investigating.

Mr. LOVE. He says that I told him that was the necessity of life in Alaska.

Mr. BRANDEIS. Well it is, or rather was, was it not?

Mr. LOVE. No, sir.

Mr. BRANDEIS. Was not that the necessity of life in Alaska?

Mr. LOVE. No, sir.

Mr. BRANDEIS. Did you not have to live and eat, etc., with the crowd there, because there are very few people and very few possibilities?

Mr. LOVE. No, sir.

Mr. DENBY. May I, Mr. Brandeis, interrupt here to ask for information? Is it your idea by this line of questioning to establish that this affidavit of Mr. Jones did not constitute a criticism of Mr. Love?

Mr. BRANDEIS. No; Mr. Jones in that affidavit was undertaking to state facts.

Mr. DENBY. I am merely trying to get in mind your trend of thought.

Mr. BRANDEIS. I am merely undertaking to establish that they were facts.

Senator SUTHERLAND. Are you not undertaking to do more, to establish by the witness that they were not in the nature of criticism and reflect upon them?

Mr. BRANDEIS. I am undertaking to show also by the witness not so much they were in the way of criticism, but that the witness is in error, his feeling and perfectly natural resentment, at the supposed attack upon his integrity has led him to overlook the exact fact.

Mr. DENBY. I asked the question, because I notice the next to the last sentence of the affidavit is a statement by Mr. Jones that he does not make the above statements because of any spite or ill feeling he had toward Mr. Love, which would appear to indicate that Mr. Jones thought this was a criticism, and so I am merely trying to find out whether you wished to establish it was or was not.

Mr. BRANDEIS. It was undoubtedly a criticism and was so regarded by everybody as a criticism of his fitness to make a particularly delicate investigation, and, as it was said at the time, while not attacking his integrity, it showed that his judgment was just a little warped, might be a little warped, and I want to call specific attention to these particular allegations with a view to going into that question as to whether that fact was not a fact, that his judgment was not a little warped, however good the intentions of Mr. Love were.

Mr. GRAHAM. Let me ask the witness a question there, Mr. Brandeis. Mr. Love, with reference to that sentence referring to your staying at Mr. Davis's house, when you read that sentence, does it not strike you as being an attempt to give a friendly explanation to your act, which was a rather questionable one, was it not?

Mr. LOVE. No, sir; it does not strike me that way.

Mr. GRAHAM. Staying at the house apparently as the guest of a man you were investigating?

Mr. LOVE. Not when it is read in connection with the fact that this whole affair was supposed to be a charge so serious that the Secretary of the Interior wrote two letters on it to the effect that because I had done something in Alaska I was to be denied what had been arranged for me.

Mr. GRAHAM. Look at it as it would appeal to a stranger or an outsider to whom it had been stated that you were the guest of a man whom you were investigating as a violator of the law; would not this statement of it appear to be an attempt, to use the street phrase, to let you down easy?

Mr. LOVE. No, sir; as I read it——

Mr. GRAHAM. Let me read it for you and see how it strikes you.

Mr. LOVE. All right.

Mr. GRAHAM (reading):

He said also that it was a different proposition in Alaska from what it was in the States about making extensive investigations of alleged frauds. That in Alaska, one has to eat, sleep, and live with the parties under investigation. That, for instance, in going to Katalla, Alaska, one has to stop at the hotel run by the people who are building up Katalla, the Clark-Davis-Lippy crowd, and that if one made himself disagreeable to said crowd he could not go to some other place and get lodgings like he could in the States, but would have to take anything he could get, or sleep out of doors.

Mr. LOVE. In the first place the statements are not true; in the second place he puts it as coming from me, as my justification. If he had said such and such are the conditions in Alaska it would be very different, but he merely quotes me; he is only quoting me now, professing to quote me as giving this as a reason. In the first place the quotation is not true and the facts are not true. I would not have been telling the truth if I had made any such statements to him.

did not make any such statements to him; and, in the second place, he puts it in my mouth as having made it.

Mr. GRAHAM. Would you regard it——

Mr. LOVE. As a very weak excuse.

Mr. GRAHAM. Would you regard it as a more friendly act of his if he had stated that you did put up at the home of Mr. Davis whom you were investigating for alleged fraudulent violations of the law, which you say was the fact, and that you did not need to do it, if you did not want to do so you could get plenty of any other places to stay; would you regard that statement of it as a more friendly one, because more accurate?

Mr. LOVE. That would have been the truth.

Mr. GRAHAM. Would you have regarded it as a more friendly way of putting it?

Mr. LOVE. No, but I would just as lief the truth be told and let it go at that.

Senator PURCELL. This man Davis that he speaks of in this affidavit was the same man that you stopped with, was it?

Mr. LOVE. Yes, sir.

Senator PURCELL. Then it is partly true, is it?

Mr. LOVE. That fact is, if it was necessary.

Senator PURCELL. You have stated here that you did stop with him.

Mr. LOVE. Yes, sir.

Senator PURCELL. And the reason that you did stop with him was that because if you did not stay there you would have had to stay over a dance hall?

Mr. LOVE. Certainly; it was not necessary because I have stayed over dance halls a great many times.

Senator PURCELL. That may be true, but that does not answer the question.

Mr. LOVE. I think it does, sir.

Senator PURCELL. Is there anything in that affidavit that you claim is different from what you have already stated here in relation to your stay with Davis?

Mr. LOVE. Yes, sir.

Senator PURCELL. What is it?

Mr. LOVE. Because he stated that I said it was necessary. It was not necessary. I could have stayed at the other place.

Senator PURCELL. That was more to your advantage. Did he not mean that a man would stop where he would have his sleep undisturbed; therefore it was necessary to do that?

Mr. LOVE. Well, I would have slept over the dance hall.

Mr. GRAHAM. If he had said reasonably necessary, it would have been all right?

Mr. LOVE. No; if he had said it was more desirable, or something of that sort, but when you say it was a necessity——

Senator PURCELL. Talking about the matter of delicacy; if you could have slept just as well over the dance hall, why did you not go there?

Mr. LOVE. Because it was not a reputable place.

Mr. MADISON. Dance halls in Alaska are not generally reputable places, are they?

Mr. LOVE. Or elsewhere, I guess.

Mr. MADISON. You say you have slept in them many times before?

Mr. LOVE. Yes, sir.

Mr. MADISON. But on this particular instance you saw fit to raise that objection?

Mr. LOVE. When there were other accommodations to be had yes, sir. I need not have gone there.

Mr. MADISON. Whether true or untrue as to the question of necessity, it certainly was a statement in your favor rather than against you, was it not?

Mr. LOVE. What was?

Mr. MADISON. Why, when he said you went there from necessity rather than from choice?

Mr. LOVE. No; but he put that in my mouth. If he had said it was a necessity it would have been a very different proposition, the way it appears to me.

Mr. MADISON. And even if he did put it in your mouth, it was a very small matter, wasn't it?

Mr. LOVE. I suppose so.

Mr. MADISON. I think it is so small a matter that, so far as I am concerned, I think it ought to close right here, and I think the other members of the committee feel that way with me.

Mr. LOVE. I am willing.

Mr. BRANDEIS. That is the feeling, I think. I will pass on to the other questions.

Mr. MADISON. I wish you would.

Mr. BRANDEIS. As to whether his judgment was not a little warped. Now, Mr. Love, you have made reports in every one of those cases—I mean of the Cunningham, 30 of the Cunningham claims—all that had gone to entry?

Mr. LOVE. Yes, sir.

Mr. BRANDEIS. And I suppose every report was practically on the same form, was it not?

Mr. LOVE. Yes, sir.

Mr. BRANDEIS. And the form of that report or a sample, which would act for practically all, was this:

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Juneau, Alaska, January 17, 1907

Hon. REGISTER AND RECEIVER,
U. S. Land Office, Juneau, Alaska.

GENTLEMEN: I have the honor to invite your attention to the application for patent of Michael Dineen, Spokane, Washington, under U. S. coal land survey No. 34 "Ausonia."

Inclosed please find a supplemental affidavit by claimant, dated 31st of December 1906, which I would respectfully request be filed and made a part of the record.

In view of the statements therein made, and from inquiries, I believe claimant has acted in good faith in this matter, and therefore recommend that his entry be allowed. Very respectfully,

H. K. LOVE,
Special Agent, G. L. O.

Now all of these 30 recommendations was substantially in this form?

Mr. LOVE. Yes, sir.

Mr. BRANDEIS. And of the 30 persons whose claims you recommended for patent you had interviewed only 2?

Mr. LOVE. Yes, sir.

Mr. BRANDEIS. Clarence Cunningham, and who was the other one?

Mr. LOVE. Ignatius Mullin.

Mr. BRANDEIS. Ignatius Mullin, the son of the receiver?

Mr. LOVE. Yes, sir.

Mr. BRANDEIS. Now, as a matter of fact, when other investigators came to take up these Cunningham claims they found a very different situation from what you reported, did they not?

Mr. LOVE. Yes, sir.

Mr. BRANDEIS. Well, in your report there would not have been any of those elaborate proceedings which have been pending through the Land Office, of a hearing commencing in November and continuing up to this day, would there?

Mr. LOVE. No; and I guess everybody ought to be glad of that.

Mr. BRANDEIS. Glad of what?

Mr. LOVE. Let me explain, please.

Mr. BRANDEIS. Just answer my question, please.

Mr. LOVE. Very well, I answered it.

Mr. GRAHAM. You asked him "Glad of what?" Let him answer that.

Mr. BRANDEIS. Yes; glad of what?

Mr. LOVE. Of these elaborate investigations. Let me explain, please.

Mr. GRAHAM. Let me understand. You mean these investigations here, or do you mean the Cunningham hearings?

Mr. LOVE. I mean the Cunningham hearings.

Mr. GRAHAM. You mean everybody would be glad if there had been no Cunningham hearings, is that what you mean?

Mr. LOVE. Oh, no. But not so elaborate, lengthy, and drawn out.

Mr. GRAHAM. You stated to him when he remarked there would have been no Cunningham hearings, you stated that everybody would be glad of that. Then he asked you "Glad of what," and I want to know just what you mean?

Mr. LOVE. I mean of the drawn-out condition of the Cunningham hearings, yes, sir. Let me explain, please, that the order of the Land Office was, and was as late as I was in Portland under Mr. Glavis, that where you are reporting in favor of an entry you are not to give any reason at all. When I got down there I endeavored to report the reasons for a favorable report, to give the reasons, and I was turned down and directed not to do it, not to submit the affidavits that I had secured, but only in cases where you are reporting adversely. Consequently, when I sent those affidavits in in each of those cases I merely referred to other investigations, and I considered that I had done even more than the regulations required.

Mr. BRANDEIS. That is interesting, but that is not answering the question. The question is what would they be glad of, and Mr. Graham said he would like to have that question answered.

Mr. LOVE. I answered that.

Senator SUTHERLAND. He has gone fully into that, Mr. Brandeis.

Mr. BRANDEIS. Do you understand so; I do not understand that he has.

Senator SUTHERLAND. I understand that he has.

Mr. JAMES. I do not understand he has gone fully into it. He said in answer to the question about his report that if his report had been accepted that this hearing would not have been on, and everybody

would have been glad of it; I think the committee ought to know what he meant.

Mr. LOVE. I did not mean it that way.

Mr. JAMES. Then, you ought to explain whether you mean to say that everybody would have been glad if that report had been accepted and these lands had been turned over to these people.

Mr. LOVE. Oh, no; that wasn't in my mind at all.

Senator SUTHERLAND. I think the witness has gone fully into it, and it is a waste of time to ask him anything more about it.

Mr. JAMES. I do not think it is a waste of time, when a witness makes a statement like that, to have a complete understanding of what he means.

Mr. BRANDEIS. I should be very glad to have Senator Sutherland understand what he means.

Senator SUTHERLAND. I understand what everybody who listened to it must have understood. He says he referred to the Cunningham hearings—not that he was glad there had been no hearing at all, or the people had been glad there was no hearing, but that it had been so long drawn out. That is the full statement he made about it, and if he repeats it a thousand times it would not be any more than that.

Mr. LOVE. That is exactly it.

Mr. BRANDEIS. What was the objection to it having been long drawn out?

Mr. LOVE. Why, it was tiresome to everybody; that's all.

Mr. BRANDEIS. It is not tiresome to you, is it?

Mr. LOVE. I am not particularly interested.

Mr. BRANDEIS. It is not tiresome to me, and I do not think it is tiresome to anybody in this room.

Mr. LOVE. All right; have it your own way.

Mr. GRAHAM. Do you know of any way it could have been shortened, Mr. Love?

Mr. LOVE. In my opinion it could have been closed out long ago; the same amount of evidence taken and taken promptly.

Mr. GRAHAM. And the Government's rights preserved equally well?

Mr. LOVE. In my opinion, yes, sir. The truth is, so far as I have been able to go into it, I do not see that anything has been developed against the Cunningham claims.

Mr. MADISON. On August 2 you sent in a report which you characterized as a favorable one on the Cunningham claims?

Mr. LOVE. In a way, entirely favorable, except the legal question that I raised; yes, sir.

Mr. MADISON. You think that so far as the facts are concerned that, cutting out that legal question, which was merely as to whether or not a combination after entry and before patent was allowable, that your report was entirely favorable?

Mr. LOVE. Yes, sir; I intended it to be.

Mr. MADISON. So that if there was nothing in the legal question, which is now conceded by everyone, that your report was a favorable one, and one which meant that, in your judgment, the Cunningham claims should be patented?

Mr. LOVE. Yes, sir.

Mr. MADISON. And your position then to-day, before this committee, is that the Cunningham claims ought to have been patented on your report of August 2?

Mr. LOVE. Oh, no; no indeed, sir; in fact, on the contrary, my letter of the 2d of August to the register and receiver asked that they send the whole thing to Washington; instead of putting to entry the last three or four entries, to send it all here; but I did not pass any judgment as to whether they should be patented on my report or not. I submitted the whole thing to the department to do as they pleased.

Mr. MADISON. But you stated in the beginning of your testimony here that your report of August 2 was a favorable report?

Mr. LOVE. Oh, certainly.

Mr. MADISON. Secretary Ballinger afterwards ordered the clear listing of these claims on your report, did he not?

Mr. LOVE. Well, I am not acquainted with that, you know.

Mr. MADISON. But do you not understand that now?

Mr. LOVE. In a general sort of way; yes, sir.

Mr. MADISON. Now, then, are not we to understand your remarks with regard to the wearisome investigation, and that it would be better if it had been disposed of, and so forth, as meaning this, that in your judgment the matter ought to have been finally wound up by the issuance of patent to the Cunningham claimants?

Mr. LOVE. On my report?

Mr. MADISON. Well, whether done upon your report or otherwise?

Mr. LOVE. So far as I am concerned, on my report, most certainly, because I believed then, or I would not have reported so, and I believe now that they are within their rights under a poor law; yes, sir.

Mr. MADISON. And you believe to-day that they are entitled to their patents?

Mr. LOVE. I certainly do.

Mr. MADISON. Well, that is what I want to know.

Mr. JAMES. You would have so reported that had you continued there as special agent?

Mr. LOVE. Yes, sir; unless I found something that I have not seen yet.

Mr. DENBY. You had already referred the legal question to the department?

Mr. LOVE. Yes, sir; the legal question, of course, was based on a question of fact, but I took that as acknowledged and unquestioned, because that came from the best evidence—the agent—

Senator PURCELL. You do think that way, do you, considering that the contract, or the alleged contract, between the Cunningham coal claim holders and the Guggenheim-Morgan interests was made?

Mr. LOVE. After entry; yes, sir.

Senator PURCELL. And notwithstanding that contract was made, you still think they are entitled to that land?

Mr. LOVE. Yes, sir.

Mr. BRANDEIS. As a matter of fact, you never have changed that opinion one moment since January, 1907?

Mr. LOVE. Yes, sir; I have.

Mr. BRANDEIS. When?

Mr. LOVE. When I first heard about the Guggenheim contract. The way I read it it existed before the entry, and I thought to myself then that if those men, the thirty-three of them, did not tell me the truth in the affidavits that I sent them, that I would be very glad to see them lose their land; but as it turned out, this contract seems to have been made after entry.

Mr. BRANDEIS. Independently of the Guggenheim-Morgan episode, you have never changed your mind, and that only temporarily. You have never changed your mind from the time back in January, 1907, up to this date, that those claims were all right, as you recommended them to be in January or February or March, about those dates?

Mr. LOVE. No, sir.

Mr. BRANDEIS. What is the error?

Mr. LOVE. I should have said also that this charge that Cunningham was to have a one-eighth interest; if that was so, it ought to invalidate every one of those claims, and when it was first reported I took it as coming from his notebook; it looked as though it ought to be right; and if it is now, he ought not to have patent, because then what he told me could not have been right, don't you know, and what every one of the others told me could not be if they were under obligations—

Mr. BRANDEIS. Now, Mr. Love, you will admit that there is evidence that he did have an agreement for one-eighth interest with all of those persons.

Mr. LOVE. Well, I have not really followed it now enough to discuss it.

Mr. BRANDEIS. What did you mean when you refer to "now"?

Mr. LOVE. I had the newspaper report as I came along on the train. We do not get very much in the center of Alaska, and it is a very garbled account that we get there. But it was reported that this handbook of his showed that he was interested in every one of those claims, and he had sworn to me, and each one of them had sworn to me, that there was no such interest. All right now, and when I read that I, for the time being—but I think since then that has been explained away, because every one has denied in Spokane and elsewhere, individuals, have denied that they had any such interest with him.

Mr. BRANDEIS. Many things are denied which are not explained away.

Mr. LOVE. Well—

Mr. MADISON. They have been explained to your satisfaction?

Mr. LOVE. Sir?

Mr. MADISON. They have been explained to your satisfaction?

Mr. LOVE. Only as I have seen the garbled account; that is all.

Mr. DENBY. I think the witness stated hypothetically that if they were explained away.

Mr. MADISON. I want to get it clear; that is the reason I asked him the question if they had been explained to his satisfaction.

Mr. LOVE. I have only seen the garbled account. I would not pass any opinion. I said if they could not be explained away that they ought to lose their land.

Mr. MADISON. I merely asked you for the state of your mind; that is all.

Senator PURCELL. In your judgment the coal lands of Alaska disposed of in this way would have been all right, as you have stated?

Mr. LOVE. Under this law?

Senator PURCELL. Yes.

Mr. LOVE. No, sir.

Senator PURCELL. Well, in the way Cunningham and the rest of them disposed of theirs or obtained theirs?

Mr. LOVE. Under the old law of 1904?

Senator PURCELL. In the manner in which they are claiming these lands.

Mr. LOVE. You mean if they entered the land individually and in groups, but with only the hope that after entry they would sell the lands or form a company?

Senator PURCELL. You seem to be familiar with all of the facts pertaining to that deal. Do you think that a proper way for people to acquire lands in Alaska, coal lands?

Mr. LOVE. I certainly think, as I said a moment ago, up to entry the Cunningham people were within their rights, and that what they did after entry, provided they were in good faith at entry, does not affect their right of title.

Senator PURCELL. When you speak of entry, do you mean the filing or do you mean the obtaining of the receiver's receipt?

Mr. LOVE. Obtaining the receiver's receipt.

Mr. BRANDEIS. Now, Mr. Love, you spoke of the Cunningham memorandum. You mean the journal, what is called the journal, did you not?

Mr. LOVE. Yes, sir.

Mr. BRANDEIS. Now, on page 61 of the list of orders, the chronological list of orders, begins a copy of the journal, and it reads thus [reading]:

Have options on several coal properties in Alaska, having examined and sampled same in Oct. & Nov. last, with the result that I have agreed to take up the options and am entering into verbal agreements with the subscribers & whose names will appear on the following pages, whereby each of said subscribers shall have one claim of 160 acres recorded in his name and will own same individually until such time as title can be secured for same. After this is done each subscriber agrees to deed his interest to a company to be formed for the purpose of developing and marketing said coal and receive stock in the said company in payment for same, but it is further agreed that each subscriber shall have one-eighth ($\frac{1}{8}$) of his stock issued to Clarence Cunningham in consideration of his services in securing said land. This $\frac{1}{8}$ interest to be issued to the writer of these pages is to be exclusive of his own holdings, upon which he agrees to meet and make his payments in common with all others who enter into this agreement, and is understood to be $\frac{1}{8}$ of the entire stock of the said company.

In carrying out the above plans the following subscribers paid amounts as follows, those paying first getting in at a lower rate than afterwards, when options were paid off and surveys made:

Now, that statement in the journal of Clarence Cunningham is a statement of evidence which would tend to show that there was a fraudulent conspiracy under the laws of the United States for the acquisition of these coal lands, does it not?

Mr. LOVE. It would look that way to me?

Mr. BRANDEIS. It looks that way to you?

Mr. LOVE. Yes, sir.

Mr. BRANDEIS. That is the way it looked to the department and they have predicated charges of fraud on it and other evidence, but as a matter of fact, that evidence which existed and had existed during the whole period of your investigation, was not discovered by you, was it?

Mr. LOVE. Oh, no.

Mr. BRANDEIS. It was not discovered until Mr. Jones and Mr. Glavis took charge of the Cunningham cases?

Mr. LOVE. I presume not.

Mr. BRANDEIS. You know that it was not, do you not?

Mr. LOVE. I did not—

Mr. BRANDEIS. You know it had not been discovered up to the time you investigated?

Mr. LOVE. I said that; yes, sir.

Mr. BRANDEIS. And it was not discovered even in the supplementary investigation which you made in the summer of 1907 at Mr. Jones's suggestion, with the commissioner?

Mr. LOVE. What supplemental—

Mr. BRANDEIS. You made an investigation in the first place in which you recommended all of these—

Mr. LOVE. Not all the Cunningham claims; no, sir.

Senator PURCELL. No; they were the other claims.

Mr. BRANDEIS. Did you not make some investigation of the Cunningham claims?

Mr. LOVE. No, sir.

Mr. BRANDEIS. Nothing at all in the summer?

Mr. LOVE. No, sir.

Mr. BRANDEIS. Then all the investigation that you made was the investigation which ended in the early part of the year 1907, the reports of which appear in your letter—the sample letter which I read to you on the Dineen claims?

Mr. LOVE. Yes, sir.

Mr. BRANDEIS. Now, aside from this evidence of the Cunningham journal, you know, do you not, that Andrew Kennedy, coming to Alaska at the suggestion or insistence of Mr. Glavis, found in the condition of the property itself strong evidence of the fact that there had been a combination or agreement between the parties, do you not?

Mr. LOVE. No, sir; I do not.

Mr. BRANDEIS. Never heard of it?

Mr. LOVE. No, sir; never heard of it. I heard he had gone there. I have lived inside for a year and a half, and we get a couple of lines sometimes.

Mr. BRANDEIS. Now, let me read you this from Mr. Kennedy's report—

The CHAIRMAN. I want to say to you, Mr. Love, that he probably did not understand what you meant by living on the inside?

Mr. BRANDEIS. Yes; I think I understand him. The testimony at page 1039, that Andrew Kennedy, coal expert, making the investigation on the ground, found this: That the tunnel would not be of any special benefit, taking the tunnel which had been built at very considerable expense—"this tunnel would not be of special benefit to other entries of the group, for the reason that the direction in which it has been driven, or could be driven, namely, westerly, prevents it reaching coal east of its mouth or place of beginning."

Then again, on page 1040, from observation there are no indications on the ground that any plans have been made for mining the coal east of Clear Creek, which comprises about one-third of the entire group.

Now, supplementing that fact, are those facts which Andrew Kennedy testified to, with the further fact that the expenses of the tunnel and, generally, the expenses of the enterprise had been divided pro rata among the claimants. Would you not consider that there was some evidence of an intention to combine the property when

but for combining a large number of those who paid money for development would get nothing for the money they paid?

Mr. LOVE. You know that question was taken up with Mr. Fimple.

Mr. BRANDEIS. I understand. I ask you—

Mr. LOVE. Very well.

Mr. BRANDEIS. I ask you the question. You may answer it if you will.

Mr. LOVE. I was trying to answer it—

Mr. BRANDEIS. Answer it yes or no, and then say anything further that you like.

Mr. LOVE. I would like the stenographer to read the question.

(The stenographer read the question as follows:)

Now, supplementing that fact, are those facts which Andrew Kennedy testified to, with the further fact that the expenses of the tunnel and, generally, the expenses of the enterprise had been divided pro rata among the claimants. Would you not consider that there was some evidence of an intention to combine the property when but for combining a large number of those who paid money for development would get nothing for the money they paid?

Mr. LOVE. I consider that that was evidence, but not sufficient, knowing the circumstances as I did, that the department authorized that tunnel, and that there was no question made at all about all the people working in groups; nobody questioned that. Cunningham was paid a salary. Dozens of men were hired by the group, worked on land with the individual who paid, but didn't have any interest in it themselves.

Mr. BRANDEIS. Now, Mr. Love, you said the department authorized it—that is not true, is it?

Mr. LOVE. Well, I saw a letter signed by Mr. Fimple.

Mr. BRANDEIS. That is the letter that you referred to?

Mr. LOVE. Does not he sign it as acting commissioner?

Mr. BRANDEIS. He expressly says that he authorizes nothing whatever, and the fact of making such a tunnel will be a subject for very close investigation when the time comes, and that he has no authority to authorize anything—I mean, in substance, that particular proposition.

Mr. LOVE. I think he gives the idea that it was permissible.

Mr. BRANDEIS. Does there anything appear in that letter or in the statement of facts on which it is submitted, which indicates that perhaps one-third of all the claimants could not possibly use the tunnel, to which everybody was contributing?

Mr. LOVE. I never saw the letter that was written to the commissioner, so I do not know.

Mr. BRANDEIS. This fact in regard to the making of such a tunnel, the building of a tunnel, which could advantage only a part of the claimants, and leave others without any advantage unless the other claimants were interested in the whole property—that was a fact which did not come to your knowledge?

Mr. LOVE. Oh, certainly; I knew that they were running the tunnel.

Mr. BRANDEIS. Well, did you know that they were running a tunnel which would not benefit in anyway certain of those other claimants?

Mr. LOVE. No; in my opinion it did benefit each one. If you take into consideration the remoteness of that field and the difficulties there and the unknown character of the coal, any tunnel that would

develop the greater part of that—even though it were not on the adjoining—even though there were an adjoining claim that it did not touch. I can very easily understand that I might own an adjoining claim and be glad to contribute to one large working tunnel through land that did not touch my claim.

Mr. BRANDEIS. If you knew the fact that the tunnel had been constructed, from which, according to a coal expert, which I assume you are not—

Mr. LOVE. No, sir; I am not.

Mr. BRANDEIS (continuing). No benefit could be derived by one-third of the claimants, is that a fact which you, as special agent, called upon to investigate the bona fides of this claim, would have called the attention of the department to had you known it?

Mr. LOVE. Well, I did not know that, the way you put it. I knew that they were working—digging a common tunnel.

Mr. BRANDEIS. Did you investigate to find out whether or not that was the fact?

Mr. LOVE. No; I did not.

Mr. BRANDEIS. Well, then, there was another piece of evidence which you did not get, and which appears to have been considered by those in charge of the case of importance.

Mr. LOVE. Perhaps so.

Mr. BRANDEIS. Now, besides Mr. Kennedy, there was certain evidence which came from Special Agent Doyle; do you remember that?

Mr. LOVE. No; I never heard of it.

Mr. BRANDEIS. I refer to a letter of Mr. Glavis to Mr. Schwartz of February 27, 1908, which appears on page 644 of the record [reading]:

While in San Francisco I had the pleasure of meeting Edward Doyle, and during the few days we were together I could readily see why you think so much of him. Doyle has given me a great deal of information concerning the Alaska coal cases, especially the Cunningham group, in Spokane. He stated that Cunningham and several others associated with him had shown him blueprints of the coal fields, and from what they told him he was convinced that they had not done \$5,000 worth of work upon each claim, having only improved one or two claims, and that the improvements which they had made did not amount to a great deal. This puts a different phase on the cases, and while I shall proceed to Spokane next week, as directed, I will now be inadvisable to approve the entries for patent, even if I am unable to collect sufficient evidence to prove the conspiracy at this time, because field investigation must be made.

Now, did you have any knowledge of these facts that Special Agent Doyle ascertained from an inspection of the blueprints?

Mr. LOVE. I do not understand; I do not understand the \$5,000 they claim was necessary under the law, or any amount.

Mr. BRANDEIS. That is not an answer to my question. Will you repeat the question, Mr. Stenographer?

(The stenographer repeated the question as follows:)

Now, did you have any knowledge of these facts that Special Agent Doyle ascertained from an inspection of the blueprints?

Mr. LOVE. I do not admit that they were facts.

Mr. BRANDEIS. Well, of these alleged facts which Special Agent Doyle called attention to as evidenced by, or partly evidenced by the blueprints—did you know of them?

Mr. LOVE. I had evidence of it; yes, sir.

Mr. BRANDEIS. Did you call that to the attention of the department?

Mr. LOVE. Yes, sir.

Mr. BRANDEIS. When?

Mr. LOVE. In each one of these affidavits they say that they have developed coal on that land, and that is all the law requires, develop a workable vein of merchantable coal.

Mr. BRANDEIS. I did not ask you whether they had testified to all that the law required, because obviously you think they have done all, and did think for years that they had done all that is required. I asked you whether you had notice of the facts, or alleged facts, which Special Agent Doyle stated to Chief of Field Division Glavis?

Mr. LOVE. And I answer this way, that the man's affidavit is to me better evidence than Doyle's examination of a blueprint.

Mr. BRANDEIS. I am not asking you even that, Mr. Love.

Mr. LOVE. Then I do not understand your question.

Mr. BRANDEIS. Well, I will endeavor to put it again.

Mr. LOVE. If you please.

Mr. BRANDEIS. Special Agent Doyle stated to Mr. Glavis [reading]:

Cunningham and several others associated with him had shown him blueprints of the coal fields, and from what they told him he was convinced that they had not done \$5,000 worth of work upon each claim, having only improved one or two claims, and that the improvements which they had made did not amount to a great deal.

Did you have any knowledge of any such statements having been made by Cunningham and those associated with him?

Mr. LOVE. Well, I answered that question, that each one of the 30 had sworn to me that they had developed a merchantable coal, a workable vein of merchantable coal, and, in my opinion, that is better evidence, better for me to go on than an alleged conversation reported second-handed by somebody to somebody.

Mr. BRANDEIS. It may or it may not be better, depending upon whether the affidavits are perjured or not.

Mr. LOVE. Well, that is what I went on.

Mr. BRANDEIS. I have not asked you what you went on. If you will pay attention to my questions—I am asking you whether you got that information which Special Agent Doyle got, not whether it is information that is reliable, not whether it is information which ranks in its value with affidavits, but whether you got that information at all.

Mr. LOVE. If you mean whether I had every reason to believe, short of having been there, that they were expending a sum of money—

Mr. BRANDEIS. I am not asking you any such question at all. I am asking you whether you had from Cunningham and his associates any such information as Special Agent Doyle said that he had and reported to Glavis.

Mr. LOVE. I did not have information that they had expended \$5,000 on that claim, and the law did not require it.

Mr. BRANDEIS. Did you have any such information as Doyle stated that he had from Cunningham?

Mr. LOVE. You had better state that question again. I do not think I understand it.

Senator PURCELL. Mr. Witness, that question is plain, and it seems to me you can understand it. Did you have that information that Doyle had?

Mr. LOVE. I say I did not understand that they had expended \$5,000 a claim. That is the information——

Senator PURCELL. Well, then you did not have it?

Mr. LOVE. Very well; I answered it then.

Mr. BRANDEIS. You did not have it?

Mr. LOVE. I answered it then.

Mr. BRANDEIS. Well, now did you have this information—I am referring now to a letter of Dudley, register, to Clarence Cunningham, which appears on page 1469 of the record [reading]:

The affidavit of W. W. Baker, which you sent with your letter, I am returning, and I would urge you by all means to see Mr. Baker and have him eliminate the words which I have inclosed in pencil brackets. You know, we know, and the department knows that there will be a coalition of interests as soon as patent is granted to all in your group and it asks nothing about such a matter except that there be no understanding or agreement to such an end before patent. But when the applicant states in an affidavit that he hopes or expects to enter in combination or company with adjoining applicants, he not only casts a doubt on his own assertions of good faith, but also on that of those adjacent applicants, who comprise a group such as yours. I am afraid that if Mr. Baker insists on the affidavit as he has executed it, there will be a searching inquiry instituted by the department which will at least involve an interminable delay.

Did you share in those apprehensions of Mr. Dudley?

Mr. LOVE. No, sir.

Mr. BRANDEIS. Did you know of that affidavit?

Mr. LOVE. No, sir.

Mr. BRANDEIS. Did you know of that letter having been written by Mr. Dudley to Clarence Cunningham?

Mr. LOVE. No, sir. Nor did I have an expression between Mr. Love or Mullen that could be taken as any kind of a basis for that statement of Dudley's that "We know, the department knows," and so on. According to Mr. Mullen—I have talked with Mr. Mullen certainly fifty times prior to the boy's entry. He knew well enough what the law was; he knew what the boy would have to swear to; he professed to be a good Catholic. I swore him in the presence of his father, the father knowing what the boy was going to swear to, and in all my conversations Mullen always denied that there was any kind of an obligation on Nate's part.

Mr. BRANDEIS. But there is a letter written by the register in which he says: "You know and he knows, and the department knows."

Mr. LOVE. Well, he doesn't mean——

Mr. BRANDEIS. Then you were ignorant of the fact, if it is a fact, that that was common knowledge of all these other people?

Mr. LOVE. I certainly was.

Mr. BRANDEIS. Well, now, in view of that——

Mr. LOVE. Of course I knew in the nature of things, that all those groups—it was a fair presumption that they hoped to get together. But if he wrote there, "You know that they were going to form one"——

Mr. BRANDEIS. Does he not say that?

Mr. LOVE. I say, if he says that.

Mr. BRANDEIS. Well, I will read it to you again.

Mr. LOVE. He knew a whole lot more than I do about it.

Mr. BRANDEIS (reading):

You know, we know, the department knows that there will be a coalition of interests as soon as patent is granted to all in your group.

Mr. LOVE. He did not include me, and I understand what you are getting at, and I will say that I did not know, and do not know, and do not believe yet, that there was anything more than a hope based on the necessities of the case.

Mr. BRANDEIS. Well now, Mr. Love, does it not seem possible to you that in view of the fact that Mr. Dudley knew, which he declared was common knowledge—in view of the fact that Jones and Glavis succeeded in getting that evidence, which certainly seems damaging in the Cunningham journal—in view of the fact that Andrew Kennedy got that evidence, which from an observation of the building of the tunnel, it could not have affected beneficially one-third of the claimants—and in view of certain other facts, whatever they may be, that Special Agent Doyle found that information, do you not think that it may be because your judgment was a little warped, that none of that evidence came to your attention?

Mr. LOVE. Absolutely no.

Mr. BRANDEIS. Well, how do you explain that all this evidence could have been discovered by others, and nothing by you?

Mr. LOVE. All right. Don't get excited about it.

Mr. BRANDEIS. Yes—why is it?

Mr. LOVE. In the first place, I confined myself to Alaska. I might possibly have gotten Cunningham and gotten this memorandum or diary, or whatever you call it. That is the only thing. I was in no position to see their blueprint, and so on. So far as the tunnel was concerned, the correspondence that they had with the department indicated to me that the department was aware of that. The very fact that they would do it and know that it was absolute on its face, would indicate that they were not afraid of it. Knowing the circumstances and conditions up there as I know them, if I were in a group like that, I would very likely be glad to have a tunnel driven in there that would really show up whether there was coal there or not, even if it were not on my claim, more than likely, and consider it a business proposition to do it.

So much for the tunnel. Now, so far as the Dudley assertions there, I am not responsible for them. It was not "We know, you know, and the department knows" as a matter of fact, whether he got it in that way or not. They did not know. Dudley did not know. The department did not know.

Mr. BRANDEIS. Well, it is fact, is it not—

Mr. LOVE. Excuse me just a minute.

Mr. BRANDEIS. I beg your pardon. I did not want to interrupt you.

Mr. LOVE. If this is to be connected up with my marshalship affair, because that is the only—I might have been an efficient or sufficient agent there; it is not for me to say that. But if I neglected it for personal reasons, then I am culpable; and unless I connect it up that way there is nothing in all this, in my opinion. Now, then, I want to say that so far as all this information that my claim to have gotten is concerned, not one item of that was considered by me or any other thing in connection with my marshalship aspirations.

Mr. BRANDEIS. I think, Mr. Love—I do not wonder at it—but I think I ought to call your attention to the fact that there is nothing

that I have said in these questions which would in any way question the propriety of your being appointed as marshal.

Mr. LOVE. But you wanted to know if my opinion was not warped—that was your last question.

Mr. BRANDEIS. Well, I think—

Mr. LOVE. If I did not think that possibly my conduct or opinion were warped—they were not. If I overlooked any of this valuable testimony, it was my mistake, but that is the full extent of that.

Mr. BRANDEIS. Well, the warping of your judgment indicates a mistake; it does not impugn your integrity, does it?

Mr. LOVE. Well, I would take it that way from your—

Mr. BRANDEIS. Do you not know, Mr. Love, that as marshal, in close relations to the court, that it is an invariable rule that no judge will sit in any case in which he or his relatives or those with whom he has special relations are interested?

Mr. LOVE. Certainly.

Mr. BRANDEIS. And that in spite of the high character of our judiciary it is deemed that one should remove himself from the possibility of his judgment being warped by consideration?

Mr. LOVE. Yes; I know that.

Mr. BRANDEIS. And is it not perfectly possible that you or anyone else in the performance of a judicial investigation or other inquiry, whether judicial or not, might be warped? What I have done is, I have simply pointed out to you these particular lines of important evidence which you did not get, and ask you whether you do not think that your failure to get them is due, not to any lack of desire and not to any lack of ability, but to that warping of judgment, and among other things that natural confidence in the trustworthiness of your friends and associates?

Mr. LOVE. No, sir; I do not.

The CHAIRMAN. The record will show the following requests for the production by the Secretary of the Interior of certain documents from the files of the Interior Department:

WASHINGTON, March 28, 1910.

HON. KNUTE NELSON,
*Chairman Joint Investigating Committee,
Washington, D. C.*

MY DEAR SIR: Please request the Secretary of the Interior to produce to the committee the following original papers:

First, the daily reports of Chief of Field Division Christensen, commencing August 1st, 1909. Second, the daily reports of Special Agent Parks, commencing September 1st, 1909. Third, the daily reports of Special Agent James M. Sheridan since the date of his entry into office. Fourth, all the original papers relating to the sale by the Maxwell Ditch Company to the United States of certain property and rights in connection with the Hermiston project. Fifth, all original papers, and copies where the originals are not now available, relating to the so-called Hunt group of coal claims, or the Alaska Coal and Petroleum Company, bearing dates, received or sent, subsequently to December 1st, 1909.

Will you have the kindness to request the department to deliver these papers before 10 o'clock to-morrow morning, March 29th, if and so far as possible.

Yours, truly,

LOUIS D. BRANDEIS.

WASHINGTON, March 29, 1910.

HON. KNUTE NELSON,
Chairman Joint Committee of Congress,
Washington, D. C.

DEAR SIR: I beg to request that the Secretary of the Interior be directed to forward to the committee the following documents:

- 1 Daily reports of Special Agent Frank L. Spalding from January 1st, 1909, to December 1st, 1909, inclusive.
- 2 Letter from Special Agent Sheridan to Chief of Field Service Schwartz, October 15th, 1909.

Very respectfully,

LOUIS D. BRANDEIS.

WASHINGTON, March 29, 1910.

HON. KNUTE NELSON,
Chairman Joint Committee of Congress,
Washington, D. C.

DEAR SIR: First. Referring to letters of Messrs. Lawler, Dennett, Finney, and Carr, transmitted with Secretary Ballinger's letter to you of March 25th, 1910 (testimony 2111), will you have the kindness to call the attention of the Secretary and the several gentlemen to the following and to request further replies from them?

1 Mr. Lawler, in his letter of March 23rd, 1910 (testimony 2111), replies merely that "all matter in my personal or official possession coming within the purview thereof" (my letter) "was turned over to Mr. Carr, private secretary to Secretary Ballinger, and transmitted as requested." Mr. Lawler has omitted to comply with the request in the "second" paragraph of my letter of March 21, 1910 (testimony 2109), in which he is "requested to make written reply whether, in addition to the documents produced, they have knowledge of any other such letters, telegrams, papers, memoranda not now available for production, and if so what such other documents."

Will you kindly ask Mr. Lawler to reply specifically and fully to that inquiry.

2 Mr. Dennett, in his letter of March 25th, 1910 (testimony 2112), states that "all letters, telegrams, etc., from myself to either of said persons named therein, or from either of said persons to myself, relating to the Cunningham claims or the so-called Glavis charges, made or dictated prior to September 20, 1909, and not contained in Exempt Document 248, I have been able to find have been forwarded to the joint committee, and I have no recollection of the contents of any other letters, telegrams, etc., if any such there may have been, that are not now available for production." Mr. Dennett has confined his reply to letters and telegrams (and, I assume, memoranda and papers) from himself to persons named, and from persons named to himself. My inquiry called also for memoranda and papers, "whether official or personal, made, dictated, or prepared by them or any of them, in whole or in part," and is not confined to papers or memoranda sent to or received from the persons named. Mr. Dennett's reply denies "recollection of the contents of any other letters, telegrams, etc." My inquiry of March 21, 1910 (testimony 2109), requests him to "reply whether in addition to the documents produced" he has "knowledge of any other such letters, telegrams, papers, or memoranda," and it does not inquire merely as to his recollection of the contents of such other letters.

Will you please request Mr. Dennett to make further reply in view of the above?

3 Mr. Finney's letter of March 22, 1910 (testimony 2112), states that he has "not in my possession originals or copies, nor can I find on file any originals or copies of any of my letters, telegrams, memoranda, or papers, of, from, or to, or made by me, addressed to the persons named in said letter of March 5, or by any of them addressed to me." Mr. Finney also limits his reply to letters, telegrams, memoranda, and papers addressed by any of the persons named to him, or by him addressed to them. My letter of March 21, 1910 (testimony 2109), did not so confine the papers requested, but extended to any papers relating to the Cunningham claims or the Glavis charges, made, dictated, or prepared by him in whole or in part. Mr. Finney wholly omits to answer paragraph 2 of my letter of March 21, 1910, in which I inquire whether he has recollection of any other letters, telegrams, papers, or memoranda, not already produced.

Will you please ask Mr. Finney to make further reply in view of the above?

4 Mr. Carr, in his letter of March 24, 1910 (testimony 2113), states that his previous reply "was meant to include all correspondence, memoranda, telegrams, etc., which I received from, or addressed to any or all of the persons mentioned in said requests." My letter of March 21, 1910 (testimony 2109), was not so limited.

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Will you please request Mr. Carr to make full and explicit reply as requested in my letter of the 21st?

Second. I respectfully request you also to have Mr. F. W. Clements make reply to my letter of March 21, 1910, as if his name was included therein with Messrs. Ballinger, Dennett, Schwartz, Lawler, Finney, Carr, Murphy, and McEniry.

Very respectfully,

LOUIS D. BRANDEIS.

WASHINGTON, D. C., March 30, 1910.

HON. KNUTE NELSON,
Chairman Joint Investigating Committee.

DEAR SIR: I respectfully request that the Department of the Interior be directed to produce to the committee the originals of the following papers, and, so far as originals are not immediately available, copies:

1. Letter, Glavis to Bowman, Aug. 29/09.
2. Letter, Glavis to Bowman, Sept. 7/09.
3. Letter, Glavis to commissioner, June 10, 1908 (copy is in testimony 2077), and the answers thereto, together with all other papers relating to subsequent proceedings thereon.
4. A list of all companies seeking patents or seeking to consolidate claims under the Alaska coal law of May 28, 1908, and all papers relating to any such applications.
5. Letter of E. E. Todd to L. R. Glavis, Nov. 6, 1908, relating to decision in Portland Coal & Coke Co. case.
6. All correspondence (including telegrams), official or personal, of any officer of the Interior Department with Adolph Behrens since Jan. 1, 1910.

I also request that if any of these papers are not readily available, such as are available be sent to your committee to-day and the balance as soon as, from time to time possible.

Yours, truly,

LOUIS D. BRANDEIS.

WASHINGTON, March 30, 1910.

HON. KNUTE NELSON,
Chairman Joint Committee, Washington, D. C.

DEAR SIR: I respectfully request that the Department of the Interior be requested to produce to the committee all affidavits of statements in relation to the so-called missing letters (being part of those brought by Special Agent Bowman from Juneau signed or made by Special Agent Bowman, Jones, Christensen, Spalding, Parks, W. G. W. O'Neil, Miss Shartell, or any other persons connected with the local land office at Seattle.

Respectfully, yours,

LOUIS D. BRANDEIS.

WASHINGTON, March 31, 1910.

HON. KNUTE NELSON,
Chairman Joint Investigating Committee.

DEAR SIR: Please request the Interior Department to produce to your committee the following papers:

1. Any paper containing the "directions" (and any memoranda) relating thereto referred to in letter of C. C. Heltman, Chief Mineral Division, to H. H. Schwartz dated Nov. 5, 1907.
2. All other original papers of any kind received by, or sent by that division, relating to the Cunningham claims, and all other papers, now or formerly on file in Division N, relative to said claims, and copies so far as originals are not available.
3. The original (or if original is not now available, copy) of the receipt given by Special Agent Bowman to the Juneau land office in August, 1909, for letters, etc. taken by him from its files.
4. All original papers now or formerly in Division B, relating to the Cunningham claims, not already produced to this committee, and copies so far as originals are available.
5. Original letter of June 21, 1907, of Acting Commissioner Dennett to Horace T. Jones, and if original letter not immediately available, the original carbon in G. L. O.
6. Originals (or if and so far as originals not available, copies) of all letters, telegrams, from any official of the Interior Department to A. Christensen or from him.

any official of the Interior Department, bearing date after January 1st, 1910, relating to the so-called "missing letters" brought by Special Agent Bowman from Juneau, in August, 1909.

7. Originals (or if and so far as originals are not available, copies) of all letters and telegrams from any official of the Interior Department to A. Christensen, or from him to any official of the Interior Department bearing date after January 1st, 1910, relating to the production of evidence in the investigation (proposed or continuing) of the Interior Department.

Will you please request the Interior Department to send immediately such of the above papers as are now available and send the rest from time to time as soon as they can be produced.

Yours, truly,

LOUIS D. BRANDEIS.

The CHAIRMAN. The record will also show the following responses to calls for the production of documents:

WASHINGTON, March 28, 1910.

HON. KNUTE NELSON,

Chairman Joint Investigating Committee, Washington, D. C.

MY DEAR SIR: In compliance with the request of the committee, I hand you herewith the agreement between Mr. Barr and Mr. Glavis, referred to in Mr. Barr's testimony, and transmitted by his clerk to Washington in Mr. Glavis's care, and by the latter handed to me yesterday for delivery to the committee.

Yours, truly,

LOUIS D. BRANDEIS.

THE SECRETARY OF THE INTERIOR,

Washington, March 29, 1910.

SENATOR: In compliance with the directions contained in your letter of the 28th instant, inclosing copy of letter of Mr. Brandeis requesting that certain papers from the files of this department be furnished, I beg to say that I transmit herewith certain papers relating to the sale by the Maxwell Ditch Company to the United States of certain property and rights in connection with the Hermiston project, which, it is presumed, are the records desired. The other records called for will be furnished as rapidly as possible.

In this connection I beg to add that the demands which have been made on this department for records by Mr. Brandeis since this investigation began have been so numerous and extensive as to result in great inconvenience and expense. That which may be described as the prosecution in these proceedings has now rested, and evidence is now being introduced by counsel representing me. From this statement it is obvious that the demands of Mr. Brandeis can no longer be regarded as in the furtherance of a proper inquiry, but as being made as a mere "fishing" process. As the prosecution has rested, and as all papers heretofore called for have been furnished, it is respectfully submitted that demands upon this department for records made hereafter should not be allowed unless (1) they relate to some matter to which the evidence now being presented in my behalf relates and which records have not heretofore been presented, (2) or the nature of the evidence desired be set out, together with a statement of what those records will show, the belief of the applicant that the records will show, and the names of the informants upon whom the applicant relies for information to support the demands so made.

Very respectfully,

R. A. BALLINGER,

Secretary.

HON. KNUTE NELSON,

*Chairman Joint Committee of Investigation,
210 Senate Office Building.*

[The Secretary of the Interior.]

WASHINGTON, March 31, 1910.

SENATOR: I beg to acknowledge receipt of your letter of the 30th instant, together with copies of letters to you of Mr. L. D. Brandeis, both dated March 30, 1910. In response thereto, I beg to call your attention to my letter to you of March 29 and to say that it appears to me to be a proper response to the further demands now made

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by Mr. Brandeis upon me. They are of the same character and subject to the like objection.

As to the affidavits referred to in the letter of March 30, 1910, I would add that they are in the possession of Mr. Christensen, who has been summoned as a witness and who will be examined at an early date, and at that time these affidavits, as well as all other papers relating to the matter to which Mr. Christensen will depose, can then be seen.

I repeat that in these applications made now when the evidence of the prosecution has closed and ours has been entered upon, I see nothing else than an oblique attempt to control the manner in which the evidence I shall present shall be introduced.

Of course, I stand ready, in so far as possible, to comply with all orders of the committee made after matters to which I have referred have been made the subject of consideration.

Very respectfully,

R. A. BALLINGER,
Secretary.

HON. KNUTE NELSON,
*Chairman Joint Investigating Committee,
United States Senate.*

[The Secretary of the Interior.]

WASHINGTON, March 31, 1910.

SIR: In further compliance with the request contained in your letter of the 2nd instant, I beg to submit herewith—

(1) Daily reports of Chief of Field Division A. Christensen, from August 1, 1909, to March 26, 1910.

(2) Daily reports of Special Agent George A. Parks, from September 1, 1909, to March 15, 1910 (Mr. Parks was furloughed from and after March 15, 1910).

(3) Daily reports of Special Agent James M. Sheridan, from June 18, 1908, to March 26, 1910.

(4) The papers relating to the Maxwell Land and Irrigation Company were furnished on the 29th instant.

(5) Originals and copies of correspondence and telegrams relating to the Hunt group of claims, or the Alaska Petroleum and Coal Company, received or sent subsequent to December 1, 1909. The papers herewith (28 in number) are all in the said file of date subsequent to December 1, 1909, except those furnished to the committee February 5, 1910 (page 635 of the testimony).

In connection with the daily reports of the several special agents and papers relating to the Hunt group of coal claims, submitted herewith, it is desired that a representative of this department be permitted to pass upon said daily reports and correspondence for the purpose of determining, prior to the printing of any of them in the record, whether or not they contain information which would prejudice the interests of the Government in the event they were made public at this time.

I also beg to transmit herewith, in accordance with your request of the 29th instant—

(1) Daily reports of Special Agent Frank L. Spalding, from January 1, 1909, to December 1, 1909, except from August 1 to 5, inclusive, and September 1 to October 13, inclusive. Mr. Spalding was on duty in the office of the chief of the field division on the dates for which no reports are furnished and submitted no reports covering the said dates.

(2) Original letter of October 18, 1909, from Special Agent Sheridan to Chief of Field Service Schwartz.

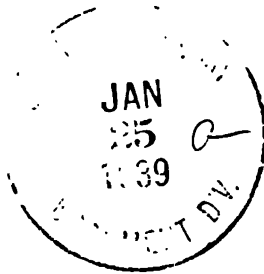
Very respectfully,

R. A. BALLINGER,
Secretary.

HON. KNUTE NELSON,
*Chairman Joint Committee of Investigation,
Room 210, Senate Office Building.*

The CHAIRMAN. It is now 5 o'clock, and the committee will stand adjourned until to-morrow morning at 10 o'clock.

(Thereupon, at 5 o'clock p. m., the committee adjourned until Saturday, April 2, 1910, at 10 o'clock a. m.)



NO. 26

**HEARINGS BEFORE THE COMMITTEE TO INVESTIGATE THE
INTERIOR DEPARTMENT AND FORESTRY SERVICE**

APRIL 2, 1910

**ROOM 207, SENATE OFFICE BUILDING
WASHINGTON, D. C.**

MEMBERS OF THE JOINT COMMITTEE.

KNUTE NELSON, Minnesota, Chairman.

SAMUEL W. McCALL, Massachusetts, Vice-Chairman.

FRANK P. FLINT, California.

GEORGE SUTHERLAND, Utah.

ELIHU ROOT, New York.

WILLIAM E. PURCELL, North Dakota.

DUNCAN U. FLETCHER, Florida.

MARLIN E. OLMSTED, Pennsylvania.

EDWIN DENBY, Michigan.

E. H. MADISON, Kansas.

OLLIE M. JAMES, Kentucky.

JAMES M. GRAHAM, Illinois.

PAUL SLEMAN, Secretary.

SATURDAY, APRIL 2, 1910.

JOINT COMMITTEE TO INVESTIGATE THE
INTERIOR DEPARTMENT AND FORESTRY SERVICE,
Washington, D. C., April 2, 1910.

The Joint Committee to Investigate the Interior Department and Forestry Service met pursuant to adjournment at 10 a. m.

There were present as counsel: Mr. Louis D. Brandeis, representing Mr. Louis R. Glavis; Mr. George Wharton Pepper and Mr. Nathan A. Smyth, representing Mr. Gifford Pinchot; Mr. John J. Vertrees and Mr. Carl Rasch, representing Secretary Ballinger.

The CHAIRMAN. The committee will please come to order. A quorum is present. I believe Mr. Love was on the stand when we adjourned yesterday.

TESTIMONY OF HENRY K. LOVE RESUMED.

Mr. BRANDEIS. Mr. Love, you stated with some heat yesterday when I asked you why you were superseded—you answered, as appears on page 2488 of the record, "it was because Jones had been peddling a lot of lies about me to Commissioner Ballinger the year before when we worked together." Now, I ask you, and I hope you are in a calmer frame of mind—

Mr. LOVE. I feel pretty good.

Mr. BRANDEIS. Whether you do not know from a statement made by Mr. Ballinger himself to you that that is not true?

Mr. LOVE. No, sir.

Mr. BRANDEIS. Did you not write Mr. Ballinger at the time this inquiry came up to seek his aid?

Mr. LOVE. Yes, sir.

Mr. BRANDEIS. You wrote him a letter and he replied to that letter?

Mr. LOVE. Yes, sir.

Mr. BRANDEIS. And the letter that you wrote him, which appears on page 2096 of this record, contained in it a copy of the correspondence which was yesterday referred to by you and Mr. Vertrees—Commissioner Dennett's letter of April 1 and your reply of April 16?

Mr. LOVE. Yes, sir.

Mr. BRANDEIS. Now, do you not recall that Mr. Ballinger in his reply to you under date of May 4, 1908, said this:

The only criticism that has ever been made to me respecting your service is that you were not as vigilant and as active as you might have been were you not a candidate for appointment as marshal.

Mr. LOVE. He wrote that.

Mr. BRANDEIS. That is his statement?

Mr. LOVE. Yes, sir.

Mr. BRANDEIS. Is it true according to the best of your belief?

Mr. LOVE. That he made it, you mean?

Mr. BRANDEIS. There is no question but what he made it; there is his letter; but I ask you, when he stated that to you, do you believe that he stated what he believed to be the truth?

Mr. LOVE. That was susceptible of different constructions, Mr. Brandeis; what was involved in my not being vigilant enough because

of a selfish interest was quite capable of a construction. Anybody will admit that.

Mr. BRANDEIS. Yes.

Mr. LOVE. Mr. Ballinger was a private citizen when he wrote that letter, and it would not have been remarkable if he had tried to write a gracious letter; but if I, while drawing pay for certain duties to be loyally given, and at the same time I neglected them because of some ulterior selfish interest, it certainly was reason enough, and if he were informed of that, in all probability that was the leading motive of the office, although he was kind enough to put it that way.

Mr. BRANDEIS. Do you mean to have this committee understand that Mr. Ballinger would distort the truth in order to say something gracious to you?

Mr. LOVE. Well, no; not in any material way. Pardon me a moment; the letter goes on to show that, as a matter of fact, he is not informed in the matter and can do nothing for me, or words to that effect, but that I may use the letter in any way in order to have a square deal.

Mr. BRANDEIS. Yes; but do you not set forth to Mr. Ballinger through the letter to him of April 28, inclosing another letter which you wrote on April 16 in reply to Commissioner Dennett's letter of April 1, did you not set forth to Mr. Ballinger fully everything that, so far as you know and interpreted it, had been charged against you, and is not that the reply which he made?

Mr. LOVE. Well, I wrote the letter, certainly, and that is the reply.

Mr. BRANDEIS. That is the reply he made.

Mr. LOVE. Let me state under oath to this committee that I do not think that that letter of Judge Ballinger's cleared me by a good deal.

Mr. BRANDEIS. I am not asking you whether it cleared you.

Mr. LOVE. I understand; but that is the way it appealed to me.

Mr. BRANDEIS. I am not asking you how it appealed to you; I am asking you what the facts were; that is all.

Mr. LOVE. All right.

Mr. BRANDEIS. And the question that I asked you was whether Commissioner Ballinger did not state with perfect directness, in language incapable of being understood more than one way?

Mr. LOVE. I say no, if that is the question.

Mr. BRANDEIS. Well, how did you understand Commissioner Ballinger?

Mr. LOVE. I understood that that was capable of two constructions; one, that because I might possibly in a short time be out of the service, that I did not care; another, that I shirked my work in order to get into a better job, and either way would be a criticism of my loyalty to my position.

Mr. BRANDEIS. Well, now, Mr. Love, at a time when you were in a calmer frame of mind—

Mr. LOVE. I am very calm now, sir.

Mr. BRANDEIS. I am glad of that.

Mr. LOVE. Yes, sir.

Mr. BRANDEIS. But, then, at another time, when you were in a calm frame of mind, you realized, did you not, that it was possible that friendship and other relations might warp your judgment?

Mr. LOVE. Anything is possible.

Mr. BRANDEIS. But you recognized it and stated that it was possible.

Mr. LOVE. I did. I said——

Mr. BRANDEIS. How did you state it?

Mr. LOVE. As I remember now, I did not profess to be any superior being; that I was quite human, and could be affected by personal obligations, or something like that.

Mr. BRANDEIS. Yes; that is very near it, apparently. On page 01 of the record you say, "I don't profess to be perfect, so far above my kind that no degree of obligation or friendship could possibly warp my views or acts."

Mr. LOVE. Yes, sir.

Mr. BRANDEIS. And it did, as a matter of fact, in connection with Harriman, did it not?

Mr. LOVE. Warp my views?

Mr. BRANDEIS. Yes.

Mr. LOVE. No.

Mr. BRANDEIS. Well, now, as a matter of fact, you stated here yesterday that you had taken Harriman's affidavit, did you not?

Mr. LOVE. Yes, sir.

Mr. BRANDEIS. Now, that affidavit that you took was an affidavit that according to your judgment did not disclose any illegality or fraud, did it?

Mr. LOVE. Well, I really do not remember particularly that affidavit. I worked over that affidavit. That was, as a matter of fact, a sort of composite statement of Mr. Harriman and Mr. Clark Davis. We worked over that. I cross-examined them and I got from them what they would give me.

Mr. BRANDEIS. I understand.

Mr. LOVE. As a matter of fact it was a preliminary examination, because, as the record shows, we were working along that line. They had not so much as applied for entry at this time.

Mr. BRANDEIS. That is true.

Mr. LOVE. Besides that, I had been largely superseded——

Mr. BRANDEIS. Well, but as a matter of fact, you took that Harriman affidavit, did you not?

Mr. LOVE. Certainly I took it.

Mr. VERTREES. Let the witness get through, Mr. Brandeis.

Mr. BRANDEIS. I beg your pardon, is there anything else you wanted to say?

Mr. LOVE. Not that I think of.

Mr. BRANDEIS. Well, you took that Harriman affidavit; and as the Harriman affidavit came out as you took it, with the best intention, and ability, there was nothing in it to indicate fraud, in your judgment, was there?

Mr. LOVE. Well, I do not remember, and I would not say.

Mr. BRANDEIS. Well, do you not know that subsequently that was investigated and that Mr. Jones secured a large number of documents showing the fraudulent character of that company, and that as a result of that investigation and the report that he has made the claimants have been proceeded against, or recommended to be proceeded against, for fraud?

Mr. LOVE. I told Mr. Jones verbally in a general way about every group in Alaska when we first met. That was not any great revelation.

Mr. BRANDEIS. Nobody has questioned what you told him; that is not the question that I put to you.

Mr. LOVE. Very well.

Mr. BRANDEIS. I put to you this question: Whether, as a matter of fact, when Mr. Jones undertook this investigation himself, whether he did not disclose a large volume of evidence which was deemed evidence of fraud, and upon which subsequently a recommendation for cancellation for fraud was made?

Mr. LOVE. I do not know.

Mr. BRANDEIS. And has been acted upon by the General Land Office?

Mr. LOVE. I do not know.

Mr. BRANDEIS. Well, now, you knew and you realized at that time—that is, in August, 1907—that these Cunningham claims might be examined, that the General Land Office might take up the examination of these Cunningham claims, just as well as other claims, did you not?

Mr. LOVE. In August?

Mr. BRANDEIS. I say you realized it in August?

Mr. LOVE. I wrote on the 2d of August to the department, and on the 1st of August, at least. I wrote on the 1st of August to the land officers recommending that the last three or four entries, sending them my affidavits, and recommending that they should not go to entry but be sent here, and asking that all of the other entries be called to the attention of the department in that connection, because the department might want to investigate them.

Mr. BRANDEIS. Yes, that is just as I understood it.

Mr. LOVE. That letter, however, was not sent, as I asked the officers to send it, but, so I am told recently, was found in the files in the Bureau office.

Mr. BRANDEIS. And you say the office did not communicate in any way?

Mr. LOVE. I did not say it.

Mr. BRANDEIS. Is that what you say?

Mr. LOVE. I say my letter to them which I asked to be sent to the office with these entries—I think the record will show that these entries I was then reporting on had gone to entry in April against the regulations. The regulations were that no entries should be made until the special agent had recommended, but I think you will find that the record shows that those very entries had gone to record in April.

The CHAIRMAN. To entry you mean.

Mr. LOVE. They had gone to record in April.

The CHAIRMAN. You used the word "record" instead of "entry."

Mr. LOVE. I mean gone to entry. The officers had not awaited my recommendations apparently in those last few cases, and naturally when they received my letter of August 1 they could not very well send the papers to the Land Office; they had already gone to entry.

Mr. BRANDEIS. Well, now, Mr. Love, let us see whether that is not partly true and partly erroneous. Your letter of August 1, which you appear to remember quite well, referred to six claims, did it not?

Mr. LOVE. I do not think that many; from four to six.

Mr. BRANDEIS. Let us see, we will look and see. On page 1379 of the testimony, W. H. Warner, Joseph H. Neill, Reginald K. Neill, Frederick Burbidge, W. W. Baker, and Miles C. Moore; that is six, is it not?

Mr. LOVE. All right, sir; six.

Mr. BRANDEIS. Now, it is a fact, is it not, that all of those six had not gone to entry at that time?

Mr. LOVE. I do not know; I think that they had.

Mr. BRANDEIS. Well, now, let us see whether that is so.

Mr. LOVE. I saw some papers the other day in the Land Office that indicated that they had gone to entry in April. That is all I am banking it on.

Mr. BRANDEIS. You will find on page 175 of the record that among the cases that did not go to entry until the fall of 1907, was W. H. Warner, who, you will remember, is one of those mentioned in your letter of August 1. His case, according to the schedule on page 175 of the Senate document, did not go to entry until October 25, 1907. So you were in error in that, were you not?

Mr. LOVE. Till when?

Mr. BRANDEIS. October 25, 1907.

Mr. LOVE. All right. I say that I think, and even if anyone had gone to entry it would have been reason enough for my letter to have been suppressed, as it were, not sent to the land office.

Mr. BRANDEIS. Why should your letter have been suppressed by the register and receiver?

Mr. LOVE. For no reason except a slip that had put an entry on record before the agent had reported it; that is all.

Mr. BRANDEIS. How would it have been proper for the Commissioner of the General Land Office to order these claims clear listed when there was upon the record in the local land office this protest of yours requesting that they should not be clear listed?

Mr. LOVE. They were not aware of it; they had no way of knowing that.

Mr. BRANDEIS. Why did they not have any way of knowing; could they not inquire about it before clear listing these claims?

Mr. LOVE. That is not the method at all.

Mr. BRANDEIS. But they did not have from you any recommendation on these claims?

Mr. LOVE. They had the evidence including the affidavit in each case.

Mr. BRANDEIS. Who had that evidence?

Mr. LOVE. The land office.

Mr. BRANDEIS. Which land office?

Mr. LOVE. The General Land Office.

Mr. BRANDEIS. Were those affidavits here in the General Land Office?

Mr. LOVE. Certainly they were here. Do you mean in the Cunningham case as a whole?

Mr. BRANDEIS. Yes, sir.

Mr. LOVE. Certainly they were here.

Mr. BRANDEIS. When were they here in the Cunningham case?

Mr. LOVE. They were sent as a case would be sent here.

Mr. BRANDEIS. When?

Mr. LOVE. Away back in the spring when the first cases were sent here; I do not know. I am not an employee of the office, but I presume they were made a part of the record, as the letter you read yesterday I wrote to the register and receiver asked that this affidavit be made a part of the record, and I presume that they did it, and sent the affidavit each time.

Mr. BRANDEIS. But at that time, and at every time that you know anything about that we are speaking about, not only then, in the spring of 1907, but equally later, there was nothing in regard to these six cases, was there, that you declared on not to be passed?

Mr. LOVE. I am not sure of the cases, but I received a telegram after I returned to Juneau in the fall, from the land office asking specifically about some, I thought only three or four cases, probably the whole six, and asking their status, and I wired—I thought, of course, my letter of the 1st of August to the land officers was in Washington—and I wired that, so far as I was concerned those cases were in the same category as the previous ones.

Mr. BRANDEIS. But you never sent on any affidavits?

Mr. LOVE. Oh, I sent those affidavits to the land office.

Mr. BRANDEIS. Those six?

Mr. LOVE. I sent them to the land office in Juneau; certainly I did.

Mr. BRANDEIS. You never sent them to Washington?

Mr. LOVE. It was not my business to. I did absolutely according to the rules and regulations from start to finish in my service in Alaska.

Mr. BRANDEIS. Then you sent them to the Alaska land office; you didn't send them here, you think?

Mr. LOVE. I did not say they did not. They did not send my letter. I do not know what else they might have sent.

Mr. BRANDEIS. When did you find out that they did not send your letter of protest?

Mr. LOVE. Since I have been here. I read it in the record. No; I beg pardon. I was shipwrecked coming out, but we were two days in Juneau, and Mr. Walker, who had been sent up there as register, told me that he had found my letter of the 1st of August up there. That was the first time.

Mr. BRANDEIS. When was this shipwreck that you refer to?

Mr. LOVE. It was the 16th day of February of this year.

Mr. BRANDEIS. Of this year, 1910?

Mr. LOVE. Yes, sir.

Mr. BRANDEIS. Then the first that you heard that the protest that you sent on August 1 to the Land Office, and asked to be entered in all these cases, that that protest had not gone to Washington, was February 16?

Mr. LOVE. No, sir; that was the shipwreck. Three days after that we got to Juneau. It was the 19th of February.

Mr. BRANDEIS. 1910?

Mr. LOVE. In the year of grace 1910; yes, sir.

Mr. BRANDEIS. That was the first that you heard of it?

Mr. LOVE. That was absolutely the first, and much to my surprise.

Mr. BRANDEIS. And when you sent that telegram that all of the cases inquired about were of the same status, you sent it in the belief that they knew later and had done everything that you had directed.

Mr. LOVE. I certainly did.

Mr. BRANDEIS. And you also sent it without any knowledge on your part of that letter of Mr. Dudley to Clarence Cunningham in which he says, "You know, and we know, and the department knows, that there is this agreement or understanding?"

Mr. LOVE. I never heard of that letter until you read it here yesterday. But let me say on oath that I have known Dudley three or four years, and he is a high-class gentleman, and I think if that letter was read carefully, and if it was submitted to Dudley he could show that it did not mean it the way it reads.

Mr. BRANDEIS. Why was he discharged from office recently?

Mr. LOVE. I do not know. It is none of my business. He told me the other day that Collier's Weekly had intimated that there was five ten thousand dollars in it for him if he would come down here and testify.

Mr. BRANDEIS. He told you that?

Mr. LOVE. Yes, sir.

Mr. BRANDEIS. But he did not want to come?

Mr. LOVE. Yes, sir; he wanted to come on the other side.

Senator PURCELL. Who did he say offered him that?

Mr. LOVE. Collier's Weekly.

Mr. JAMES. Did he say how much the other side offered? Was anything said about what the other side offered?

Mr. LOVE. No, sir. He must have overlooked that.

Mr. BRANDEIS. Tell us this conversation, because it may become important. Tell us exactly what Mr. Dudley said.

Mr. LOVE. That is exactly it.

Mr. BRANDEIS. Is that all he said?

Mr. LOVE. No, sir; he asked me to suggest or to tell that to Mr. Callinger.

Mr. BRANDEIS. Have you done it?

Mr. LOVE. No, sir; and to say that he had declined to do it, but that he would come and testify on the other side.

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Mr. LOVE. He did not say. He used the words "Collier's Weekly."

Mr. GRAHAM. Repeat the language as nearly as you can.

Mr. LOVE. I have. I met him at the hotel——

Mr. GRAHAM. You gave it in the third person; give it as he gave it, in the first person.

Mr. LOVE. All right. We met in the hotel there at Juneau and he told me—he was telling me that he was superseded—and said, as a matter of fact, he was making more money than he ever had in the mining and business, and then he went on to say that he had received an intimation from Collier's Weekly that it would be worth from five to ten thousand dollars if he would come to Washington and testify.

Senator PURCELL. Where is he now?

Mr. LOVE. He is in Juneau, Alaska.

Mr. MADISON. Did you understand from that that he meant to convey to you the idea that Collier's Weekly was offering to bribe him to testify?

Mr. LOVE. Not to bribe him, but to pay him.

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Mr. MADISON. Your distinctions are a whole lot finer than I have ever been able to draw.

Mr. LOVE. I will explain it. I do not believe that Collier's Weekly expected him to tell anything but what they thought was the truth.

Mr. JAMES. But your language was that he said it would be worth from five to ten thousand dollars for him to come down here and testify.

Mr. LOVE. That is what he said.

Mr. JAMES. To whom did he say that it would be worth that amount?

Mr. LOVE. To him.

Mr. JAMES. To him personally, five or ten thousand dollars?

Mr. LOVE. Yes, sir.

Mr. JAMES. Did you tell Secretary Ballinger about it?

Mr. LOVE. No, sir.

Mr. JAMES. Did you tell his attorneys about it?

Mr. LOVE. No, sir.

Mr. JAMES. To whom did you first communicate that conversation?

Mr. LOVE. Well, I do not know that I have mentioned it.

Mr. JAMES. To no human being?

Mr. LOVE. I would not say for sure, but I do not think so.

Mr. JAMES. A matter of that importance now, the witness telling you that a certain outsider—

Mr. LOVE. That is it exactly.

Mr. JAMES. Had said to him that it would be worth from five to ten thousand dollars for him to come down here and testify—you have been here for thirty days and never communicated that to Mr. Ballinger?

Mr. LOVE. No, sir.

Mr. JAMES. Nor to any man representing him here?

Mr. LOVE. I do not think I have mentioned it.

Mr. JAMES. And for the first time you have mentioned this to the committee?

Mr. LOVE. Very well.

Mr. JAMES. Who heard the conversation?

Mr. LOVE. I do not know that anybody heard it?

Mr. JAMES. Nobody heard it at all?

Mr. LOVE. It was in a hotel in Juneau—the Occidental Hotel in Juneau.

Mr. MADISON. What was the date of the conversation?

Mr. LOVE. I was there parts of three days; it was either—I think we landed on the 19th—the 19th, 20th, or 21st of February.

Mr. MADISON. When did you first see Mr. Dudley after you landed?

Mr. LOVE. At that time; then. He came into the hotel.

Mr. MADISON. Did he look you up?

Mr. LOVE. No, sir; I was there, and naturally he came up and shook hands.

Mr. MADISON. How is that?

Mr. LOVE. I say I was there, and naturally he came up and shook hands, and we had a conversation.

Mr. MADISON. Did he go to your room?

Mr. LOVE. No, sir; I was not with him three minutes, I do not suppose.

Mr. MADISON. And he made this statement to you in three minutes?

Mr. LOVE. Yes, sir.

Mr. MADISON. Now, give to this committee the entire conversation that took place between you and him during these three minutes, so that we may get the exact situation.

Mr. LOVE. I have; that is practically all. He told about how he had been superseded, and went on to say that he was making——

Mr. MADISON. What did he say about that—what did he say about being superseded?

Mr. LOVE. He said that later on he was going to take it up to have his personal record cleared.

Mr. DENBY. What was his position?

Mr. LOVE. Register of the land office.

Mr. MADISON. He said he had been superseded by Mr. Ballinger?

Mr. LOVE. No, sir; he had been let out.

Mr. MADISON. I mean the order had been made superseding him by the Secretary of the Interior?

Mr. LOVE. He had been let out by Mr. Ballinger and superseded by Mr. Walker.

Mr. MADISON. Oh, you understood the manner in which I used the term there. I do not care about you drawing any of your fine distinctions on me. He was an employee, or, rather, register of the land office?

Mr. LOVE. Yes, sir.

Mr. MADISON. And he said that he had been superseded by order of Mr. Ballinger?

Mr. LOVE. No, sir; he did not put it that way. "I have been let out," that was the common expression.

Mr. MADISON. By Ballinger, did he say?

Mr. LOVE. No, sir; I do not know that he mentioned the Secretary, but in fact it would not have been by the Secretary, it would have been by the commissioner. He was his chief.

Mr. MADISON. You said a moment ago that he had been let out by Mr. Ballinger, in response to a question by me.

Mr. LOVE. That is another fine point or fine distinction.

Mr. MADISON. But did you not state, and will not the record show as a matter of fact, that you said that he had been superseded by order of Mr. Ballinger?

Mr. LOVE. No, sir; I do not think the record will read that way.

Mr. MADISON. Was not Mr. Ballinger's name used in that connection, and will not the record show it?

Mr. LOVE. It was not in connection with his being superseded, no; he asked me to speak to Judge Ballinger and to tell him that, and I have not done it.

Mr. MADISON. He said to you that he had been let out?

Mr. LOVE. Yes, sir.

Mr. MADISON. He was register, and of course under the Land Office?

Mr. LOVE. Yes, sir.

Mr. MADISON. Which is a portion of the Department of the Interior?

Mr. LOVE. Yes, sir.

Mr. MADISON. Then he said to you, "Go and tell Mr. Ballinger that Collier's Weekly has intimated to me that it would be worth five or ten thousand dollars"——

Mr. LOVE. Five to ten thousand dollars.

Mr. MADISON. To testify.

Mr. LOVE. "If I would go to Washington and testify."

Mr. MADISON. Then he said, "I am going to take this matter up with the Department of the Interior?"

Mr. LOVE. No, sir. He——

Mr. MADISON. I do not mean this matter of the offer, but "I am going to take up the matter of my being let out with the Department of the Interior and have my record cleared?"

Mr. LOVE. Yes, sir.

Mr. MADISON. That was the substance of the conversation?

Mr. LOVE. Yes, sir.

Mr. MADISON. That was the whole matter?

Mr. LOVE. That was the extent of it.

Mr. MADISON. He never told you who acted for Collier's Weekly, did he?

Mr. LOVE. Oh, no, sir.

Mr. MADISON. He did not say how the intimation had come?

Mr. LOVE. No, sir.

Mr. MADISON. Whether by letter or otherwise?

Mr. LOVE. No, sir.

Mr. MADISON. Mr. Chairman, I move that this man be called as a witness—this man Dudley. I think the committee owes it to itself that that course be taken. This man says that one person has intimated that there was a bribe offered, and when there is any attempt to improperly influence a witness I think the committee should have that party here and go to the very bottom of the matter.

Mr. GRAHAM. I think it is due to every one that that should be done.

The CHAIRMAN. The Chair will put the question as to whether this witness shall be subpoenaed.

The question being put, it was decided in the affirmative.

The CHAIRMAN. The party referred to will be summoned. Do you know his full name?

Mr. LOVE. His name is John W. Dudley.

The CHAIRMAN. Where does he live?

Mr. LOVE. At Juneau, Alaska.

Senator FLETCHER. He told you, Mr. Love, that he wanted you to say to the Secretary that he stood ready to appear and testify on his side of the matter?

Mr. LOVE. Yes, sir.

Senator FLETCHER. And you have not delivered that message?

Mr. LOVE. No, sir.

Mr. MADISON. Why not?

Senator FLETCHER. What did he say he stood ready to testify to?

Mr. LOVE. He did not say.

Senator FLETCHER. Did he indicate what side of the matter or what matter he proposed to testify to in anyway?

Mr. LOVE. Nothing more than naturally that it would be on the side of the so-called defense.

Senator FLETCHER. Did he appear at all indignant at the suggestion that anyone should have offered him from five to ten thousand dollars to come here and testify?

Mr. LOVE. Well, he was not excited about it.

Senator FLETCHER. Did he appear to resent it in anyway?

Mr. LOVE. Apparently so from the very fact that he preferred to tell the truth or, as he saw it, the truth on the other side.

Senator PURCELL. Let me ask just one question. You said a moment ago that he said that Collier's wanted him to come here and testify.

Mr. LOVE. I stated it practically word for word the way he told me. He said, "It has been intimated to me by Collier's"—that is, the idea was Collier's or an agent, as I gathered it—"that it would be worth from five to ten thousand dollars if I would go down and testify."

Senator PURCELL. Did he say to what he was to testify?

Mr. LOVE. No, sir.

Senator PURCELL. Did he say that they had asked him to testify to any particular fact?

Mr. LOVE. No, sir.

Senator PURCELL. You stated that he was testifying to the truth as they believed it.

Mr. LOVE. As he believed it.

Senator PURCELL. As he believed it?

Mr. LOVE. Certainly; and as Collier's too. I do not mean for a minute that Collier's—

Senator PURCELL. You understood him then that this offer included that he was to testify to the truth, either as Collier's understood it—

Mr. LOVE. Yes, sir; certainly.

Mr. DENBY. I understand that that was your inference.

Mr. LOVE. That was my inference; yes, sir.

Senator PURCELL. Did he also tell you that Collier's would tell him what the truth was?

Mr. LOVE. Oh, no, sir.

Mr. MADISON. You have related all that was said?

Mr. LOVE. Yes, sir.

Mr. JAMES. I want to ask a question. Was he making some complaint about being discharged?

Mr. LOVE. Not any particular complaint, except so far as it affects him personally; that is, his reputation.

Mr. JAMES. How soon was this conversation that you had with him after he was discharged?

Mr. LOVE. Oh, I think it must have been—well, I do not know when he was discharged. This was the last part of February. I had read of his discharge about two months before, perhaps longer.

Mr. JAMES. He said to you that he wanted you to tell Secretary Ballinger about this offer that was made to him?

Mr. LOVE. Yes, sir.

Mr. JAMES. Of five or ten thousand dollars by Collier's to testify?

Mr. LOVE. Yes, sir.

Mr. JAMES. And he said right after that that he was going to take up the matter of his dismissal or discharge with the Interior Department.

Mr. LOVE. Well, he did not say necessarily the Interior Department, but it naturally would be with the Interior Department.

Mr. JAMES. That is where it would be taken up?

Mr. LOVE. Naturally so.

Mr. LOVE. "If I would go to Washington and testify."

Mr. MADISON. Then he said, "I am going to take this matter up with the Department of the Interior?"

Mr. LOVE. No, sir. He——

Mr. MADISON. I do not mean this matter of the offer, but "I am going to take up the matter of my being let out with the Department of the Interior and have my record cleared?"

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Mr. LOVE. Yes, sir.

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Mr. MADISON. He never told you who acted for Collier's Weekly, did he?

Mr. LOVE. Oh, no, sir.

Mr. MADISON. He did not say how the intimation had come?

Mr. LOVE. No, sir.

Mr. MADISON. Whether by letter or otherwise?

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Mr. LOVE. His name is John W. Dudley.

The CHAIRMAN. Where does he live?

Mr. LOVE. At Juneau, Alaska.

Senator FLETCHER. He told you, Mr. Love, that he wanted you to say to the Secretary that he stood ready to appear and testify on his side of the matter?

Mr. LOVE. Yes, sir.

Senator FLETCHER. And you have not delivered that message?

Mr. LOVE. No, sir.

Mr. MADISON. Why not?

Senator FLETCHER. What did he say he stood ready to testify to?

Mr. LOVE. He did not say.

Senator FLETCHER. Did he indicate what side of the matter or what matter he proposed to testify to in anyway?

Mr. LOVE. Nothing more than naturally that it would be on the side of the so-called defense.

Senator FLETCHER. Did he appear at all indignant at the suggestion that anyone should have offered him from five to ten thousand dollars to come here and testify?

Mr. LOVE. Well, he was not excited about it.

Senator FLETCHER. Did he appear to resent it in anyway?

Mr. LOVE. Apparently so from the very fact that he preferred to tell the truth or, as he saw it, the truth on the other side.

Senator PURCELL. Let me ask just one question. You said a moment ago that he said that Collier's wanted him to come here and testify.

Mr. LOVE. I stated it practically word for word the way he told me. He said, "It has been intimated to me by Collier's"—that is, the idea was Collier's or an agent, as I gathered it—"that it would be worth from five to ten thousand dollars if I would go down and testify."

Senator PURCELL. Did he say to what he was to testify?

Mr. LOVE. No, sir.

Senator PURCELL. Did he say that they had asked him to testify on any particular fact?

Mr. LOVE. No, sir.

Senator PURCELL. You stated that he was testifying to the truth as they believed it.

Mr. LOVE. As he believed it.

Senator PURCELL. As he believed it?

Mr. LOVE. Certainly; and as Collier's too. I do not mean for a minute that Collier's—

Senator PURCELL. You understood him then that this offer included that he was to testify to the truth, either as Collier's understood it—

Mr. LOVE. Yes, sir; certainly.

Mr. DENBY. I understand that that was your inference.

Mr. LOVE. That was my inference; yes, sir.

Senator PURCELL. Did he also tell you that Collier's would tell him what the truth was?

Mr. LOVE. Oh, no, sir.

Mr. MADISON. You have related all that was said?

Mr. LOVE. Yes, sir.

Mr. JAMES. I want to ask a question. Was he making some complaint about being discharged?

Mr. LOVE. Not any particular complaint, except so far as it affects him personally; that is, his reputation.

Mr. JAMES. How soon was this conversation that you had with him after he was discharged?

Mr. LOVE. Oh, I think it must have been—well, I do not know when he was discharged. This was the last part of February. I had read of his discharge about two months before, perhaps longer.

Mr. JAMES. He said to you that he wanted you to tell Secretary Ballinger about this offer that was made to him?

Mr. LOVE. Yes, sir.

Mr. JAMES. Of five or ten thousand dollars by Collier's to testify?

Mr. LOVE. Yes, sir.

Mr. JAMES. And he said right after that that he was going to take up the matter of his dismissal or discharge with the Interior Department.

Mr. LOVE. Well, he did not say necessarily the Interior Department, but it naturally would be with the Interior Department.

Mr. JAMES. That is where it would be taken up?

Mr. LOVE. Naturally so.

Mr. JAMES. With the department over which Secretary Ballinger presides?

Mr. LOVE. Yes, sir.

Mr. JAMES. Now, did you understand from him that he wanted you to tell Secretary Ballinger about this conversation with the Collier's agent, or some person representing Collier's, about this offer of from five to ten thousand dollars for the purpose of letting him have an opportunity to come here and testify for Secretary Ballinger, or for the purpose of influencing Secretary Ballinger in trying to have him reinstated?

Mr. LOVE. No, sir; absolutely and only for the information of the Secretary, whether or not he would have him on his side. That was all. It had absolutely nothing to do with any ulterior aims on Dudley's part.

Mr. JAMES. Well, did Dudley state to you whether or not he would accept this employment?

Mr. LOVE. No, sir; he spoke as though he never really considered it.

Mr. JAMES. And you never communicated anything about it at all?

Mr. LOVE. The tone and the act, and all, would indicate that. No, sir; I have not.

Mr. JAMES. Although he requested you to say to Secretary Ballinger that he wanted to come here and testify?

Mr. LOVE. Yes, sir. I certainly have not mentioned it to the Secretary, and I do not think that I have to any of the attorneys. If so, they are perfectly at liberty to say so.

Mr. JAMES. But they talked to you about what you knew about the case?

Mr. LOVE. Well, about what I knew about it; yes, sir; but I do not think I have mentioned it.

Mr. JAMES. Notwithstanding that he requested you to do that thing?

Mr. LOVE. Yes, sir.

Mr. JAMES. You never gave that information?

Mr. LOVE. I do not think I have mentioned it.

Mr. MADISON. Why not? Why did you not tell a matter of that kind?

Mr. LOVE. Well, it was none of my affair.

Mr. MADISON. You do not think a matter of that kind is of sufficient importance for you to have mentioned?

Mr. LOVE. I had my doubts as to whether he had gotten it straight, and I did not care to be mixed in it, by reporting it.

Mr. JAMES. You say you have your doubts as to whether or not he was telling you the truth?

Mr. LOVE. Not that at all, but whether he had gotten the right impression from whatever communication he received.

Mr. JAMES. You say now that the reason you did not mention it was because you really doubted whether or not he had, in fact, received such an offer?

Mr. LOVE. I mean whether he had put the right construction on it.

Mr. MADISON. Now, you shot that statement out here at Mr. Brandeis in a way that indicated that you wanted to hit somebody. Why did you tell it in that way, in that manner, if, as a matter of fact, you doubted whether or not he had gained the right impression?

Mr. LOVE. Well, I said it in that way. The committee can decide it.

Mr. MADISON. Very well. I think they can.

Mr. BRANDEIS. Mr. Love, Mr. Cunningham and Mr. Mullen were the only persons I think you have stated that you took affidavits from?

Mr. LOVE. Personally; yes, sir.

Mr. BRANDEIS. All the others you took by sending them the circular letter which Mr. Vertrees read, or introduced through you in evidence yesterday?

Mr. LOVE. Yes, sir.

Mr. BRANDEIS. Was there any question on behalf of the different Cunningham claimants as to the propriety or ability of making the affidavits?

Mr. LOVE. Yes, sir.

Mr. BRANDEIS. Which ones questioned it?

Mr. LOVE. I do not remember; but I had two or three letters, I am pretty sure, and the records were all sent to Mr. Glavis. I had protests from them to the effect that they had already stated the same things in their regular affidavits.

Mr. BRANDEIS. Was that the only protest or criticism that came?

Mr. LOVE. That is the only thing that I recall.

Mr. BRANDEIS. Did you receive anything from this W. W. Baker, whom Mr. Dudley said, or in respect to whose affidavit Mr. Dudley said, "You know and we know and the department knows?"

Mr. LOVE. I do not remember of anything from him; no, sir.

Mr. BRANDEIS. Well, I find in the Cunningham record, on page 602 of the printed record, a postscript in reference to certain other affidavits, as follows:

Since writing the above I saw for the first time pencil scratches, interlineations, etc., contained in my affidavit. I don't know much about them, but imagine it was done when in company with Mr. Smith and Mr. Henry—

Mr. MADISON. From what are you reading?

Mr. BRANDEIS. I am reading from the Cunningham volume—the Cunningham papers.

Senator PURCELL. We have not that volume.

The CHAIRMAN. It is the testimony taken before the commissioner.

Mr. BRANDEIS. You will remember that it was put in here, a copy of it in typewritten form, and was at the suggestion of Senator Root printed. Part of it has not as yet been completed. The postscript continues:

We tried to frame up something that might be less objectionable to good church members, but finally decided there was nothing in it we could not sign, so let it go as it was.

Do you remember that?

Mr. LOVE. Now that you read it I remember something of the sort. I really do not connect it up, though.

Mr. BRANDEIS. You do not know what was done?

Mr. LOVE. No, sir.

Mr. BRANDEIS. I would like to read the letter of which that is a part, which may be the means—

The CHAIRMAN. What page is that?

Mr. BRANDEIS. Complainant's Exhibit No. 1. It is on page 601. This was simply the postscript to the letter. The letter is as follows:

Mr. H. K. LOVE, Juneau, Alaska.

MY DEAR LOVE: Your esteemed favor of February 5 just at hand, and I take pleasure in advising you that I will return herewith the affidavits, with corrections as suggested by you; also the information requested, as nearly as I can obtain same. I have just returned from Seattle, where I have been for two weeks, and there got as much inside information, perhaps, as anyone at this end, and as yet there is probably a lack of confirmation to make it very authentic.

With regard to the pencil statements on my affidavit, I beg to say that these were not made by me, but Mr. C. J. Smith, who thought he was writing on his own, and until I signed and swore to same in your office was not aware that it had been changed. Hence I will rule these statements out, as suggested by you, in addition to acknowledging the one sent by you to replace it.

The amount expended by my brother is also inserted in his affidavit, and I have advised each of the applicants for title, whose agent I am, to forward money at once. I presume each one has sent the necessary affidavits.

We are very much gratified, of course, to learn that our filings can be accepted without the long hold up which threatened us, for at best it takes a long time to do very much in Alaska, and I am sure it is not necessary for me to inform you that it costs far more than anticipated to complete any enterprise.

With regard to the Christopher and Green properties, I have very little inside information since seeing you. I have learned that Mr. McDonald is now working on the Christopher ground, having abandoned, for the time being at least, the claims he started to survey last fall. Green has been down to see the President, and I presume has acquainted him with all the facts necessary to cause a modification of his instructions to the Land Office, etc.—

This is what I had special reference to—

As regards the railroad terminus, it looks as though Katalla is to be the place. They have shipped quite a large amount of machinery and general supplies, together with horses and men (be)for(e) active work, and I am advised authoritatively that five steam shovels, a sawmill outfit complete, and a great number of horses will go on the 24th, but while all this may take place, there is still a chance of the terminal being changed on further report as to the harbor question. You know they have already expended a large sum at Cordova, also at Valdez, both of which places are temporarily at least, abandoned, and there is no reason why they could not also abandon Katalla, if their experts should pronounce the harbor facilities too costly, in which event Cordova would be the natural selection. I am sorry I could not give you more definite information on this subject, but there is such a feeling of uncertainty that no one can prophesy at this time just what might happen.

Now, with very kind regards, and thanking you for the interest shown, I am,

Yours, very truly,

(Signed) CLARENCE CUNNINGHAM.

Then follows the postscript which I read about the church members. That letter appears not to be dated. I suppose that February there in referred to—February 5—are you able to give us what February that is? February, 1907, is it?

Mr. LOVE. It must be, I take it; yes, sir.

Mr. BRANDEIS. There is an affidavit with it which appears to be in January, 1907. Now, you have stated with some definiteness—great definiteness—in answer to Mr. Vertrees's question when he read you passages from the report of Special Agent Jones, dated December 2, 1907, that the statements made by Mr. Jones were not true, being largely statements of conversations with Commissioner Ballinger. So you recall that?

Mr. LOVE. Yes, sir.

Mr. BRANDEIS. Have you any memoranda of any kind as to your conversations with Commissioner Ballinger, or as to any of the occurrences in the month of July and August, 1907?

Mr. LOVE. Written memoranda; no sir.

Mr. BRANDEIS. Written or printed or dictated?

Mr. LOVE. No, sir.

Mr. BRANDEIS. Then the testimony that you have given and the denials which you have made of Mr. Jones's statements were made upon your unaided recollection?

Mr. LOVE. No, sir.

Mr. BRANDEIS. How has your recollection been aided?

Mr. LOVE. The statements so far as the statements that he makes—you do not mean about me?

Mr. BRANDEIS. I am referring now to this report.

Mr. LOVE. Yes; all right.

Mr. BRANDEIS. It is not about you; it is the report of what took place during the summer.

Mr. LOVE. All right. Take, for instance, the conversation that Mr. Jones alleges that took place in Judge Ballinger's office when Judge Munday was there. In the first place, I had spent two or three days with Munday. I had brought him over there. The statement that Mr. Jones makes is based necessarily—in fact, he says so in so many words—that Munday claimed a right to file on lands through dummies, and that thereupon he protested when Judge Ballinger declined to express an opinion when asked for. I believe that that is a fair statement of that proposition. Now, the use of dummies is the A B C of the coal business, and as that was my business, I was supposed to know, certainly, the A B C of it. The statement that Munday had made does not include any such claim as that, and if he had stated there in our conversation it could not have helped but appeal to me, and if he had put the question to Judge Ballinger the way Mr. Jones says he did, and the judge refused to answer, it would have certainly been astonishing to me. If he had made that kind of a claim it would have not been necessary for Mr. Jones to have been the only spokesman.

Mr. BRANDEIS. Mr. Reporter, will you repeat to the witness my last question?

Mr. LOVE. You asked me if I was aided in any way in recollecting the conversation that took place.

(The reporter read as follows:)

How has the recollection been aided?

Mr. LOVE. I think that that explains it, that that was the A B C of the work; Judge Ballinger, if he had refused to go on record on that question the way Mr. Jones says he did, it would have been amazing to me.

Mr. BRANDEIS. That was all the aid; you have stated all the aid that you have to your recollection, have you?

Mr. LOVE. The paper in evidence here, signed afterwards by Judge Munday, is an aid, too, because it tells a history of the whole thing very candidly and is not involved with dummies at all.

Mr. BRANDEIS. Does Judge Munday's statement—

Mr. VERTREES. Won't you let him finish his answer?

Mr. BRANDEIS. I beg your pardon; I thought he had finished.

Mr. LOVE. It did not involve the proposition of the use of dummies at all, although Mr. Jones says that he told Judge Ballinger that he was going to get all the land that he could in that way, and put it right up to the judge for an opinion whether it was right or wrong. The judge refused to answer, thereupon Mr. Jones makes his remarks.

Mr. BRANDEIS. Do you mean to say that statement of Mr. Munday's in any way is a memorandum as to what occurred at this interview?

Mr. LOVE. I say that I have read it since it has been in evidence—since I have been here—and it is a support to my proposition.

Mr. BRANDEIS. I am not asking you whether you have a support in reason, but I am asking you whether there is anything to aid your recollection. Do you not know the distinction?

Mr. LOVE. Very well; that is an aid.

Mr. BRANDEIS. Now let us have that affidavit.

Mr. VERTREES. It was put into the record yesterday. I presume it was printed.

Mr. BRANDEIS. Will you let us have the original affidavit, if it is here?

Mr. VERTREES. We gave it to the stenographers yesterday, and we do not know where it is.

Mr. VERTREES. On page 2481; it seems to have been printed in yesterday's proceedings.

Mr. OLMSTED. Do you refer to that paper that is printed on 2481?

Mr. VERTREES. Yes. You have it before you. Will you now point out anything in that affidavit which refers to the conversation which you had with Mr. Ballinger and with Mr. Love?

Mr. LOVE. With Mr. Jones, you mean?

Mr. BRANDEIS. That Mr. Munday and Mr. Jones and you had with Commissioner Ballinger?

Mr. LOVE. Do you really mean that question?

Mr. BRANDEIS. I mean just that question.

Mr. LOVE. Certainly there is nothing there.

Mr. BRANDEIS. Is there anything in that affidavit which refers to any conversation which you and Mr. Jones had with him?

Mr. LOVE. Why, no, Mr. Brandeis; that is, I could not—

Mr. BRANDEIS. Well—

Mr. OLMSTED. Let him finish his answer.

Mr. BRANDEIS. I beg your pardon.

Mr. LOVE. I could not have made myself plain. I mean this, that that affidavit is a candid history by Munday of his connection with the so-called Munday or English group of claims; that in that there isn't anything on the subject of dummies; that we took that statement over and read it there, in the office, in the presence of all four of us and discussed it. Now, it is not in the claim; it is not based on the dummy proposition, and that Munday never made any such statement that he was getting land by dummies and intended to get as much as he could, and then put it up to the judge whether it was legal or not.

Senator SUTHERLAND. How soon after the conversation that you speak of was this affidavit made?

Mr. LOVE. That was made—I swore Judge Munday afterwards. We went over to his office and I swore him; I think I swore him in the presence of Judge Ballinger and Mr. Jones, but I am not sure.

Senator SUTHERLAND. Immediately after the conversation you took his affidavit?

Mr. LOVE. Yes, sir.

Senator SUTHERLAND. Immediately afterwards?

Mr. LOVE. Yes, sir; I had been working with him for two or three days on it, and this was the result.

Senator SUTHERLAND. The affidavit covers the same subject-matter as the conversation?

Mr. LOVE. Exactly; yes, sir. We read it over and discussed it here, all four of us.

Mr. BRANDEIS. That we will put in later.

Mr. GRAHAM. Is there anything in this affidavit which refreshes our recollection as to the matter about which Mr. Brandeis is inquiring, and if there is point it out.

Mr. LOVE. Well, the whole history, the whole history of the case set forth there shows how Munday was getting his claims.

Mr. GRAHAM. I know, but what I mean is, if there is any specific thing here that does refresh your recollection, we want to know it.

Mr. MCCALL. I think the witness has stated that the fact that this was not referred to in the affidavit strengthened his recollection, corroborated it.

Mr. GRAHAM. It is a sort of negative refreshing.

Senator ROOT. Of course it would refresh anybody's recollection to read over a paper which was read as a part of a conversation.

Mr. MADISON. You undertook to say that as a matter of fact in reading it over it does help you to remember, and that is all there is to it?

Mr. LOVE. Why, it only assures me of my recollection.

Mr. MADISON. It seems that is enough on that, whichever it may be, if he says it helps him.

Mr. BRANDEIS. We will see when we examine him. The denial which you made was by no means confined, as I recall it, to this single Munday proposition?

Mr. LOVE. Oh, certainly not.

Mr. BRANDEIS. Now, let us have the other papers, if any there be, which refresh your recollection on any question that was testified to—I mean, that is stated in the December 2 report of Mr. Jones.

Mr. LOVE. I do not claim any.

Mr. BRANDEIS. You do not claim any?

Mr. LOVE. No, sir.

Mr. BRANDEIS. Now, I will ask you this fact, if, in your capacity as special agent and your experience in testing the credibility of witnesses, would it not be a very remarkable thing if Mr. Jones, as subordinate of Commissioner Ballinger, when requested to make a statement of what occurred at the time that Mr. Ballinger was his superior, should, apparently for no motive whatever that is discernible, make a statement that was not correct?

Senator SUTHERLAND. Do you think that is a proper question to put to the witness?

Mr. BRANDEIS. I think it is; I think it is a very proper question to put to him.

Senator SUTHERLAND. I do not. I think it is wholly a matter addressed to the committee. It is purely argumentative.

Mr. BRANDEIS. A great many questions put on cross-examination are purely argumentative.

Senator PURCELL. That calls for a conclusion. You can not help it. You have to in the proper cross-examination of a witness.

Mr. JAMES. They have to be argumentative sometimes.

Senator SUTHERLAND. It seems to me it is so clearly a question of argument and a matter which is addressed to the judgment of the

committee that it ought not to be put here. Won't you read that question over, Mr. Reporter?

(The reporter read the question as follows:)

Now, I will ask you this fact, if, in your capacity as special agent, and your experience in testing the credibility of witnesses, would it not be a very remarkable thing if Mr. Jones as subordinate of Commissioner Ballinger, when requested to make a statement of what occurred at the time that Mr. Ballinger was his superior, should, apparently for no motive whatever that is discernible, make a statement that was not correct?

Mr. BRANDEIS. Perhaps I should correct that and say a statement of the conversation with Mr. Ballinger which was not correct. Is that objectionable to you, Senator?

Senator SUTHERLAND. I shall not object to it, but I think it is very clearly objectionable.

Mr. BRANDEIS. I do not want to put a question that you think is clearly objectionable.

Senator SUTHERLAND. I thought perhaps you yourself could see that it was objectionable when it was read over.

Mr. DENBY. Answer, Mr. Love?

Mr. LOVE. I would answer that by saying that it was certainly very unfortunate, but true in fact.

Senator PURCELL. The question is whether it was remarkable, in your judgment, Mr. Love?

Mr. LOVE. Well, I am not a judge of the possibilities of the human mind, although an ex-special agent. But I think in fairness to the committee I might say that my contradiction of Mr. Jones is not based altogether on my assertion as against his. On the 8th of May, 1907, I wrote to the department saying that the important work of the winter would be the investigation of the coal-land cases in Alaska, as they were coming on for entry. Now, I had already recommended the Cunningham cases here, and without making that request, because, from the consensus of opinion and all of the evidence as I had gathered it, I felt that they were all right. Other cases, the other groups, were in very different shape. Therefore I wrote on the 8th of May asking to be sent to Seattle where I could properly examine them. The record shows that. Then when Mr. Jones came to my house, the very first afternoon, I told him I was going to ask Judge Ballinger to put me to work on the coal cases of Alaska, and he said he would back me up, which he did the next morning. He won't deny it; he admits it. Now, if I had told him I wanted to get out of the coal cases because of any aspirations on my part, that must have been a planned scheme, and I could not forget it. When the record shows that only a short time before Jones says I told him I wanted to get out of the work, a letter had been written by me asking to be put on the work, and when in his presence I asked Judge Ballinger to put me on the work, he spoke up and said: "Yes, Judge. I would be glad to have him assist me." It seems to me that those are supplemental to my statement as against his.

Mr. BRANDEIS. Well, which statement in this letter of December 2, 1907, that I asked you about, were you answering now?

Mr. LOVE. I thought you meant all the statements that Mr. Ver-trees asked me about yesterday, in which I denied the veracity of Jones.

Mr. BRANDEIS. I think, Mr. Chairman, in view of this statement which the witness has made, that we ought to have it in the record—, will not be necessary to read it at this time—the letter and the reply that he referred to. I will be glad to give them to you.

The CHAIRMAN. They are admitted in evidence.

Mr. BRANDEIS. The letter is a letter of May 8, 1907, and the reply is —

Senator ROOT. Is it possible that it is not in yet?

Mr. BRANDEIS. There are many things that have not gone in yet. May 27, 1907, is the reply. I think that is all, Mr. Love.

(The letters are as follows:)

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Valdez, Alaska, May 8, 1907.

The HONORABLE COMMISSIONER, GENERAL LAND OFFICE,
Washington, D. C.

SIR: I have the honor to address you, venturing a suggestion that may be for the good of the service.

Upon my suggestion a year ago I was directed to establish headquarters at Valdez, and it was arranged that such should be done this spring. Subsequently the Prince William Sound country was withdrawn for the purpose of creating a forest reserve. This action, and the fact that the railroad situation has not developed or become definite, as was expected when I had the honor to suggest the change, make it really inadvisable, I believe, to locate at Valdez just now. The record will show that for five or six months (fall, winter, and early spring) I am not a busy man, and that my work is practically all of office character. It seems from recent order that an earnest effort is being made to bring the work of the office up to date and keep it there, even the short handed. Now, I would very much prefer to do my whole part, or as nearly as I can, and therefore would respectfully suggest that I be directed to establish temporary headquarters at Seattle the coming fall and winter, there to assist in such work as may require attention, and at the same time keep up Alaska matters.

I urge that it is possible that such a plan might be advisable for a year or more. Alaska is developing, and each year adds a new section where work may be found, but for a year or so it can be thoroughly covered in the summer months, and especially after becoming familiar with it as I am getting. One will be convinced of this upon examining the character of my work, as shown by the record.

Furthermore, aside from the settlement for trespassed public timber, the most important item that requires attention is the determining of the bona fides of the many coal claims now on record and of which entry is contemplated. The claimants are in practically every case nonresidents, many living in Seattle, Spokane, and Portland. My principal duty the coming winter will be the investigation of such claimants as may apply for patent, and there are to be a goodly number. This can be better done in Seattle than from Juneau, and might of itself justify spending the winter there. But if I can be of service I would like to help in other fields; to tell the truth, I am not altogether satisfied with the service that I am rendering.

There is another reason, entirely personal and of so private a nature that I dislike to speak of it, and yet, to be candid, I think it should be mentioned, for it is a reason, though not a principal one. About October 1 I expect a son and heir. My wife is now in Victoria, British Columbia, or Seattle, by advice of our home doctor. It will be necessary that I ask leave to be in Seattle some two months this fall, or to return to Juneau earlier than desired to prepare for her return September 1, about. And, besides, I would much prefer that she remain for the winter in that section.

Within a few days I go into the Yentna River country (Mount McKinley district) for about two months. May I ask that I be advised upon my return to Valdez of your wishes and directions in the premises?

Very respectfully,

H. K. LOVE, *Special Agent, G. L. O.*

2542 INVESTIGATION INTERIOR DEPT. AND BUREAU OF FORESTRY.

RE PERMANENT ASSIGNMENT OF SPECIAL AGENT FOR DUTY IN ALASKA.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., May 27, 1907.

Mr. HENRY K. LOVE,
Special Agent, G. L. O., Valdez, Alaska.

SIR: Your letter dated May 8, 1907, at Valdez, Alaska, in which you request, in reasons stated, that during the fall, winter, and early spring months you be allowed to establish temporary headquarters at Seattle, Wash., has been received.

It is the desire of this office to keep an agent on duty in Alaska during the entire year, and if you would prefer, in view of such fact, to take an assignment elsewhere at a reduction in salary to \$1,500 a year, proper steps will be taken to secure a competent agent to take charge of the Alaska work by transfer from one of the field divisions, or to fill the vacancy thus created in the field division.

Otherwise you will remain on duty in Alaska, with headquarters at Juneau.

Very respectfully,

FRED DENNETT,
Assistant Commissioner

The CHAIRMAN. Mr. Vertrees, you may proceed.

Mr. GRAHAM. Just a question before Mr. Vertrees takes hold. Mr. Love, do I understand you are an attorney at law?

Mr. LOVE. No, sir. I ran for a lawyer and got beat.

Mr. GRAHAM. It was a very unfortunate circumstance for the profession, I take it.

Mr. LOVE. Possibly.

Mr. GRAHAM. Well, you spoke yesterday about practicing in some court?

Mr. LOVE. Oh, that was the land—oh, I was assistant prosecuting attorney of Whitman County, Wash., many years ago.

Mr. GRAHAM. Do you mean that you acted in that capacity, although not an attorney of record?

Mr. LOVE. Oh, no, indeed; I was admitted to the state and federal courts.

Mr. GRAHAM. Well, that is the question I asked you at first and I understood you to say it was not so.

Mr. LOVE. Well, I meant that I have not considered myself a lawyer. You asked me if I was a lawyer.

Mr. GRAHAM. An attorney at law.

Mr. LOVE. I have not considered myself a lawyer for twenty-five years.

Mr. GRAHAM. Answer me seriously now. When were you admitted to the bar?

Mr. LOVE. I think it was in the spring—I know it was in the spring of 1883.

Mr. GRAHAM. In what State?

Mr. LOVE. In Iowa and Missouri.

Mr. GRAHAM. I think you mentioned the fact that you practiced in Dakota—one of the Dakotas.

Mr. LOVE. That was only before the land office.

Mr. GRAHAM. In which Dakota was that?

Mr. LOVE. South Dakota; but it was in Dakota in those days; it was before the division.

Mr. GRAHAM. It was a Territory then; before the separation?

Mr. LOVE. Yes, sir.

Mr. GRAHAM. How long did you enjoy that kind of practice?

Mr. OLMSTED. He didn't say he enjoyed it.

Mr. LOVE. I never enjoyed it; but it extended over two or three years.

Mr. GRAHAM. Did it not pay?

Mr. LOVE. It paid until Secretary Lamar got busy with the land titles in the West.

Mr. GRAHAM. Did you learn whether your clients enjoyed it, if you did not?

Mr. LOVE. Oh—

Mr. GRAHAM. Well, you need not answer that.

Mr. LOVE. I do not think it is fair to be personal that way.

Mr. GRAHAM. I quite agree with you. Now, the courts in which you practiced were United States registry courts—or what were their names?

Mr. LOVE. I did not practice in it, but I was admitted to the United States district court for the district of Iowa, and in Missouri to the state court.

Mr. GRAHAM. Well, to what extent were you engaged in litigation of business in the land courts, in land cases?

Mr. LOVE. To what extent?

Mr. GRAHAM. Yes.

Mr. LOVE. I was attorney at one time for the Western Farm and Mortgage Company, of Pierre, S. Dak., and I had—I will tell you how it was worked in those days. There were lawyers—that is, these land lawyers—at the seat of the local land office, and there were lawyers in the little towns throughout the district, and they would send their business to the lawyer at the local land office.

Mr. GRAHAM. Which class do you come in?

Mr. LOVE. I was at the local land office in Dakota.

Mr. GRAHAM. In that way you enjoyed a practice which came to you through other lawyers in smaller towns?

Mr. LOVE. Oh, yes; and some local, of course.

Mr. GRAHAM. Some local, of course?

Mr. LOVE. Yes, sir.

Mr. GRAHAM. Did you have any experience in land cases except what you had in Dakota?

Mr. LOVE. Oh, yes, sir.

Mr. GRAHAM. Where else?

Mr. LOVE. In Washington.

Mr. GRAHAM. When?

Mr. LOVE. In Whitman County and Spokane.

Mr. GRAHAM. When was that?

Mr. LOVE. That was in—I left Iowa in the spring of 1883, and I think by July I was in Colfax, Whitman County, Wash., and formed a partnership there with Mr. Charles Voorhees, Senator Dan Voorhees's son, who was county prosecuting attorney.

Mr. GRAHAM. Well, I do not care for that—

Mr. LOVE. I was there some months.

Mr. GRAHAM. I do not care about your partners, however. How many years experience did you have in land cases from your first case to your last one?

Mr. LOVE. As a so-called attorney?

Mr. GRAHAM. No, as an attorney; leave the so called out.

Mr. LOVE. Probably three or four years. Afterwards I was in the farm and mortgage business, and had a great deal to do with land-office work, as an incident of that.

think that I was making the inquiry. I wanted the addresses without them thinking I wanted to get into direct communication, and so the addresses were secured, and from that time I corresponded directly.

Senator PURCELL. Now, in the letter in which he returns those affidavits to you, he says that there were certain interlineations made, and that, naming two parties—I have forgotten their names—he tried to arrange it so that they could swear to it, but they concluded they could swear to the affidavits just as they were drawn.

Mr. LOVE. Yes, sir.

Senator PURCELL. Now, who made those interlineations?

Mr. LOVE. I think, as I recall it, that the affidavits had gotten mixed. A man there—I think Mr. Brandeis will be able to explain that to you better than I can; it is probably fresher in his mind. One of the claimants signed the Cunningham affidavit—no; there were some—I know that—

Mr. VERTREES. Mr. Love, there is a postscript that was referred to, suppose you read that.

Mr. LOVE. That is not exactly fresh enough in my mind to explain. But as I remember it, in their relations down here in the States, the affidavits were mixed and the wrong man signed the other man's affidavit; they were all the same, you understand. And so I sent Cunningham a new affidavit. That is what he referred to, and instead of making out the new one, I think he erased the pencil—were they not pencil interlineations, Mr. Brandeis?

Mr. BRANDEIS. I know nothing about it.

Mr. LOVE. Something of that sort, I do not know what it was.

Mr. MADISON. I think it shows it in the papers.

Senator PURCELL. I know it mentioned something; I did not get it very clear. Now, you were investigating their claims, were you not?

Mr. LOVE. Yes, sir.

Senator PURCELL. And were you making the affidavits in such a way as to furnish to the Land Office affidavits made by them in relation to those claims?

Mr. LOVE. If I understand your question, yes; certainly.

Senator PURCELL. In other words, you were putting up to them the opportunity of having them show to the Land Office what their acts were in relation to the procuring of this land?

Mr. LOVE. Certainly; yes, sir. I did not confine my investigations to them, however.

Senator PURCELL. Did you ever run across a man who would put in an affidavit anything but what he believed to be to his interests?

Mr. LOVE. Well, I certainly hope I have run across such men, yes, sir; many of them.

Senator PURCELL. Well, the Cunninghams did not do it, did they?

Mr. LOVE. I think they did.

Senator PURCELL. That is all.

Mr. DENBY. That is the general practice, is it not, Mr. Love?

Mr. LOVE. Sir?

Mr. DENBY. That is the general practice, is it not, to take the claimant's affidavit?

Mr. LOVE. As a matter of fact, under the land law the burden of proof is on the claimant until entry. He is the one really who

Mr. VERTREES. What I wanted to get before the committee was the fact that there was not a report to a superior at all, but a letter written at the verbal suggestion of Mr. Louis R. Glavis.

Mr. LOVE. I am not familiar with that letter.

Mr. MADISON. Well, that is apparent.

Mr. BRANDEIS. The letter states that.

Mr. VERTREES. I know it is apparent; but it was not apparent from the previous question.

Mr. MADISON. What that meant is this—you called it to our attention—we catch that.

Mr. VERTREES. The letter reads:

In compliance with your verbal request, etc.

Mr. MADISON. Yes; we get that.

Mr. VERTREES. Do you know whether or not the office of the register and receiver is a presidential appointment; that the President appoints and the Senate confirms?

Mr. LOVE. Yes, sir.

Mr. MADISON. On the recommendation of the Secretary of the Interior. It is indorsed, is it not?

Mr. LOVE. Oh, I do not know about that; I am not sure.

Mr. MADISON. I think that fairly ought to be stated.

Mr. LOVE. I presume so.

Senator ROOT. What—the appointment?

Mr. MADISON. The appointment by the President on the recommendation of the Secretary of the Interior.

Senator ROOT. We had better not go into that, because there is really no rule about that.

Mr. MADISON. I should not have stated anything about it; I do not care anything about it, only the question was asked.

Senator PURCELL. Why did you send those affidavits that you had prepared to Cunningham? Why did you send them to them?

Mr. LOVE. Why, they lived down in the States, and the regulations forbade your going out of your district. I was located in Alaska; Alaska was my territory, and as I understood the rule, you were not allowed to travel out of your district.

Senator PURCELL. There were interlineations mentioned in these affidavits. Were these interlineations made before they were sent to them?

Mr. LOVE. No, sir. My affidavits always went out without any interlineations.

Senator PURCELL. But these were other affidavits. Affidavits that Clarence Cunningham made.

Mr. LOVE. I did not catch your meaning.

Senator PURCELL. It appeared from some correspondence here that you had sent to Mr. Cunningham certain affidavits for him to sign in connection with these mining claims.

Mr. LOVE. Yes, sir.

Senator PURCELL. Well, now, why did you send them to him—for what purpose?

Mr. LOVE. Well, I sent his to him; I sent the first few that I got out to him, because on the record at Juneau the addresses of the applicants were not given, and I asked Mr. Dudley to write to him requesting those addresses, and told him it was because I did not want them to

think that I was making the inquiry. I wanted the addresses without them thinking I wanted to get into direct communication, and so the addresses were secured, and from that time I corresponded directly.

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Mr. LOVE. As a matter of fact, under the land law the burden of proof is on the claimant until entry. He is the one really who

appears of record in the making of the homestead proof, and timber, coal, or other proof, except these corroborating witnesses in the homestead proof. I did not, however, confine myself by any manner of means to these affidavits for my investigation.

Senator PURCELL. It may be all right, Mr. Love, but it strikes me as rather peculiar if you were looking for evidence of a man doing something wrong, to prepare an affidavit for that same man and ask him in it to accuse himself of wrongdoing, and then return the affidavit to him for correction.

Mr. LOVE. No, sir; I did not do that. My letter was read here yesterday, and I think it puts me in the right light.

Mr. VERTREES. I think in view of the questions—now, if I understand you, and it is necessary to repeat it in order to avoid confusion, that is apparent—I understood that you could not leave your place of assignment, your duties, to go into the other States?

Mr. LOVE. Yes, sir.

Mr. VERTREES. These claimants were widely scattered?

Mr. LOVE. Yes, sir.

Mr. VERTREES. And you prepared an affidavit which you had Mr. Cunningham to sign?

Mr. LOVE. Yes, sir.

Mr. VERTREES. And he did sign it?

Mr. LOVE. Well, he did not sign it at first.

Mr. VERTREES. I mean by that, after you had talked with him you prepared an affidavit according to what you understood him to say, and then he made it?

Mr. LOVE. Oh, after many talks with Mr. Cunningham, for that matter.

Mr. VERTREES. Yes; I understand that.

Mr. LOVE. And with others.

Mr. VERTREES. And with others. We will get to that presently. The point I want your mind on now is, that having got Mr. Cunningham's affidavit, the manner in which you approached the others that you had to reach by correspondence was to send them a copy of Mr. Cunningham's affidavit together with a letter from you asking them to make affidavit of a similar character?

Mr. LOVE. The statements were the same; I would not call it a copy of his; but in one sense they were all carbon copies of each other, really.

Mr. VERTREES. Now read to the committee the letter which you sent out with that carbon form, that you sent to these applicants, which was read on yesterday.

The CHAIRMAN. That was read yesterday.

Senator PURCELL. That was read yesterday?

Mr. VERTREES. Yes, sir. It seems to have escaped Senator Purcell's attention.

That was your course of procedure?

Mr. GRAHAM. What page is that?

Mr. VERTREES. I refer to a letter which appears on page 2475 of the record.

Now you have said you did not confine yourself to the information you got from the claimants whose affidavits were taken. Just state in a general way your way of getting the information, and the character of information that you did get.

Mr. LOVE. For practically a year and a half before the Cunningham claims were ready for entry I had been in Alaska, and I had been several times to Katalla, and I had met practically all of the representatives of the groups, coal groups; not only the Cunninghams, but all and many other people that professed to know the ins and outs of what was going on. In fact these representatives seemed to know very much about the work of the other groups. The first time that I was in Katalla, before I had been there long enough for anybody to know who I was, I met an old gentleman by the name of Davidson, and in a conversation, such as comes up, of how we happened to be there and the like, he told me he had started out to Seward, Alaska, which had been booming that spring on account of the railway building, and he was going there for the purpose of going into business. But when he got as far as Seattle he had heard that the boom had dropped off and he would not go any farther. He was from the Palouse country—that is in eastern Washington—and he said his son had a claim in the Cunningham group of coal claims, and that he had promised his boy not to come back until he had had practically determined whether it was worth while to continue holding that claim, that his son was running a little country store in the Palouse country, and that Cunningham was drawing on him for funds far in excess of what they originally thought would be called for, and he needed the money in his business. It was a question they didn't know how long before it would be realized, even if they got the entry.

Well, I cross-questioned him pretty thoroughly, and if I ever talked to a man who seemed to be telling the truth, a plain man, as he was, he was one. I wanted to know that if he couldn't carry the claim, or if his son couldn't carry it, would not the others take it off of his hands, as there certainly must be an understanding amongst them, etc. No, he said, that they had nothing of the sort, and each one must hold up his claim or lose it. That is the gist of what I got from him. It continued that way for a year and a half, and I met all sorts of people, and the coal subject was general—that is, when you come in from the Katalla section the coal question was the principal topic of conversation. I was investigating not only the Cunningham claims, but all of them in a preliminary way. It was really remarkable how various ones would criticise the other groups, yet they all of them seemed to confess that although there was a great deal of jealousy, yet they would all confess that the Cunningham people were all right. It was the consensus of the people in that section. Very well.

When these Cunningham claims were up for entry, that was my belief that when these affidavits came in they supported that belief. To say nothing of the fact that I was very intimate with Receiver Mullin, and I had many, many talks with him, and he knew the status of the Cunningham group; and I knew that he knew it, his son being interested and he being very friendly with Cunningham.

Now, the result was when these claims were up for entry I believed that they were right, within their rights, and I believed that I had secured sufficient evidence to justify my report. However, later on when other groups were arranged for entry, the proposition was very different. There had been various charges made, and thereupon I wrote to the department, asking to be sent where they could be properly investigated; whereas I did not do that in the Cunning-

my claims, for the reason that the evidence all seemed to be in my favor. I might say that I had fewer personal relations with Cunningham than with several of the others. I know him very intimately up to this day. I had absolutely no interest at all in the outcome of the claims except to do what I thought was the right thing.

Senator PURCELL. Did you and Mr. Cunningham have any talks about where the harbor would be located?

Mr. LOVE. Oh, yes, sir; everybody—that is——

Senator PURCELL. That was a common matter——

Mr. LOVE. That was a common matter of discussion.

Senator PURCELL. You were anxious to know where that would be located, were you not?

Mr. LOVE. Oh, no; that was what the railroad people were going to do, whether they were going to Katalla or Cordova.

Senator PURCELL. But you were anxious to know something about it?

Mr. LOVE. Yes, sir.

Senator PURCELL. Did you talk with Mr. Cunningham about it?

Mr. LOVE. I suppose I talked with him, but I wrote him that letter, as he was down in Seattle where the information was to be had, and I asked him what was the news.

Senator PURCELL. So in this letter in which you sent him these affidavits, you also requested of him some information regarding some enterprises that were going into Alaska?

Mr. LOVE. Well, you could put it that way; yes, sir.

Senator PURCELL. That is what he means when he says in his letter, 'I am sorry I can not give you more definite information on this subject?'

Mr. LOVE. Yes, sir; that is what he referred to.

Senator PURCELL. "But there is such a feeling of uncertainty that no one can prophesy at this time just what might happen."

Mr. LOVE. Yes, sir.

Senator PURCELL. So that it is true that there were some business matters talked of between you and him?

Mr. LOVE. I wouldn't call it business matters; no, sir; it was just a matter of living in a new country like that, where everybody is interested in what is going to be done.

Senator PURCELL. You asked him to favor you with some information?

Mr. LOVE. Yes, sir; you can put it that way.

Mr. BRANDEIS. It was in the nature of a favor, what you asked, then? Did you have an enterprise or business relations with him at all?

Mr. LOVE. Absolutely none.

Mr. BRANDEIS. In other words, he was down there and you wrote him as you would any other acquaintance for information?

Mr. LOVE. Yes, sir.

Mr. BRANDEIS. And that was the extent of the favor?

Mr. LOVE. Yes, sir.

Mr. VERTREES. Well, then, your August 1, 1907—in the course of the examination—your letter to the register and receiver of Juneau has been referred to as a protest with reference to these six claims: Warner, Neill, Reginald K. Neill, Frederick Burbidge, Baker, and Miles C. Moore.

Now, I will ask you whether it raises any other questions than the legal question you have heretofore mentioned?

Mr. LOVE. This letter to the register and receiver?

Mr. VERTREES. Yes.

Mr. LOVE. No, sir; I think you will find that it goes on to say that I believe they are correct, but recommend that it all be sent to Washington and let them decide.

Mr. VERTREES. It does say so. I refer to the letter to speak for itself. It is found on page 1379 of the record; perhaps I had better read the last clause. It is short [reading]:

I may say that from as careful inquiry as possible, and which has been reasonably satisfactory, I am convinced that each of these locators took his claim in good faith for his own exclusive benefit, without any agreement with another governing its future disposition, although it was contemplated by all for whom Mr. Cunningham has acted that after entry a joint company for development and mining would be organized, and that such condition has obtained in each case to and subsequent to entry, including the cases above described.

As all of the Cunningham agency cases are of like character, those of record in your office and now pending before the General Land Office, as well as the above now seeking entry, I would respectfully suggest that this letter be made a part of the record in each case.

Very respectfully,

H. K. LOVE,
Special Agent, G. L. O

I call your attention to the telegram which appears on page 463 of Senate Document, and ask you if that is the telegram to which you referred when you said you received one making inquiry about those entries?

Mr. LOVE. On page 463?

Mr. VERTREES. Wait a moment. I will withdraw that question and give you another so that you may answer it more intelligently. I call your attention to a telegram which is copied on page 824 of the record and ask you to read that telegram aloud, and state whether or not you received it.

Mr. LOVE (reading):

In answer to telegram 4 all Cunningham claims same status.

Mr. VERTREES. No, the one below that.

Mr. LOVE. You mean the one below that, oh!

WASHINGTON, D. C., January 4, 1908

Special Agent LOVE,
Juneau, Alaska.

You report August 7 the last on Cunningham group coal entries; did not report on entries 16 and 31 and 22 to 36. Can these be approved? Answer.

BALLINGER, Commissioner.

Mr. VERTREES. Did you reply to that?

Mr. LOVE. Yes, sir.

Mr. VERTREES. Is that telegram in reply to that?

Mr. LOVE. I do not know. I think this is the answer here—

Answering telegram 4 all Cunningham coal entries same status —

although it precedes it.

Mr. VERTREES. That's all right; I will read it:

Answering telegram 4 all Cunningham coal entries same status.

(Signed) LOVE.

Mr. LOVE. Yes, sir.

Mr. VERTREES. That was your reply to that?

Mr. LOVE. Yes, sir.

Mr. VERTREES. Dated January 6, 1908?

Mr. LOVE. Yes, sir.

Mr. VERTREES. Now, Mr. Love, some question has been made as to whether that affidavit of Mr. Jones made any charges against you. I will ask you if you know how it was accepted and received by the President. Whether or not you know that it was accepted as a charge against you and acted upon and investigated as such, and that you were cleared of these charges and subsequently notified, and if you state you do know it, state how you know it.

Mr. LOVE. I received a letter from Mr. David Goodrich dated the 14th of March, 1908, to the effect that he had received a letter from the President and two from the Secretary of the Interior, to the effect that because of something that I had done in Alaska, I could not longer be considered as an applicant for the marshalship there.

Senator SUTHERLAND. I think this was all gone over, Mr. Vertrees.

Mr. VERTREES. That much of it, but it is preliminary to what I want to introduce. I did not mean to call for that, but I did not stop the witness.

Mr. LOVE. Well, I take it, when the President and the Secretary undertake to punish you for something, they base that on some allegation, that the allegations amount to charges. Later on I received a letter addressed by Secretary Loeb to a friend of mine, Mr. Hunter, to the effect that the Secretary—

Mr. VERTREES. Wait a moment. Have you got that letter?

Mr. LOVE. No, sir; you have it.

Mr. VERTREES. You just handed it to me; you have the letter.

Mr. LOVE. Yes, sir.

Mr. VERTREES. I will ask you to read that letter in full; everything in it.

THE WHITE HOUSE,
Washington, June 3, 1908.

DEAR CAPTAIN HUNTER: Your letter of the 27th instant, with inclosures, in behalf of Mr. H. K. Love, has been received and called to the attention of the President. The appointment of Love as United States marshal in Alaska has been ordered. The Secretary of the Interior reported to the President that Love had been cleared of the charges. The inclosures which accompanied your letter are returned herewith.

With regard, believe me,

Sincerely, yours,

WM. LOEB, Jr.,
Secretary to the President.

Hon. C. E. HUNTER,
Oklahoma City, Okla.

The CHAIRMAN. That is admitted in evidence. You will hand it to the stenographer.

Mr. VERTREES. That is all.

Senator FLETCHER. Mr. Love, let me ask you one question. Turning to page 2098 of the record referring to your letter you state—

But the record shows that all the influential companies pay annual tribute, due to my endeavor: Northwestern fisheries, Alaska Steamship and Northwestern Railway, (Guggenheim concerns); Alaska Packers; Northern Commercial; North American Transportation and Trading Company; Pacific Cold Storage, etc. But I am not overworked and have more than once so reported; you will remember I declined your repeated offer of assistance.

What do you mean by these companies paying annual tribute?

Mr. LOVE. Why, they used government timber as fuel to cook the fish, for instance, for the packeries, and every year, and they settled with me for trespass of the timber.

Senator FLETCHER. All these companies?

Mr. LOVE. Yes, sir; and many others, I expect.

Senator FLETCHER. Are they combined now and constitute largely a monopoly?

Mr. LOVE. No, sir; not the fishery companies that I know of.

Senator FLETCHER. How about transportation in Alaska?

Mr. LOVE. Well, it is generally stated that the Alaska Steamship Company, which is supposed to be owned by the Guggenheims, owns all the boats that go to the southeast of Alaska, and as far west as Valdez and Kodiak, except one individual boat, and the English boats that come up; but there is a line of boats there, there are several lines of boats to Nome, and I never heard that they were interested in those at all.

Senator FLETCHER. How about transportation by railroads?

Mr. LOVE. Well, they are supposed—and it is all supposed, so far as I am concerned; they are supposed to have control of the railway from Skagway to Whitehorse—to control that railroad. It was built by Englishmen. It is the only road in Alaska that is really carrying on any transportation business. They are building from Cordova; they built 101 miles, but it is not in operation.

Senator FLETCHER. You say they are building that now?

Mr. LOVE. Yes, sir.

Senator FLETCHER. Who is building it?

Mr. LOVE. Why, the Guggenheims. That is admitted; nobody denies that.

Senator FLETCHER. Have you informed yourself as to the character and quantity of coal embraced in the Cunningham claims?

Mr. LOVE. Well, I have taken the geological reports on this, and Mr. Kennedy's reports, I believe, and so on, and I really haven't arrived at any opinion, and it would not amount to anything if I had, although I have lived in the coal countries of Kentucky and elsewhere. But I am really afraid it is overestimated, and I would rather it would be as they claim.

Senator FLETCHER. I didn't ask you as to what your opinion was, but as I gather from your testimony you were not advised at the time of your report on these claims about the quantity or quality of coal there. Are you impressed that a field examination was important before making final report on those claims?

Mr. LOVE. I have been up in the coal fields of Katalla but not in the Cunningham group. My idea was that by all jodds the principal thing, if not all, was the question of relation between the entrymen. I haven't any doubt but what there was coal in a workable quantity on each claim; otherwise, when they were paying \$10 an acre for it, they would be simply paying for something that was not of any value at all.

Senator FLETCHER. Did you feel that the field examination was worth while in connection with these claims before passing them for clear listing?

Mr. LOVE. Under ordinary circumstances, yes, sir; I would have, if I could have made it. If I could explain it to you, it is very difficult to get up there two or three times a year; I made efforts, but things interfered, and the boat transportation from Katalla was very bad, very uncertain, and if you missed one boat there was no telling how long you would be marooned there, as it were, and I didn't go to the Cunningham claims.

Senator FLETCHER. With reference to the laws now applicable to Alaska, I think you used the expression that they were absurd.

Mr. LOVE. No, sir.

Senator FLETCHER. No?

Mr. LOVE. No, sir.

Senator FLETCHER. You do not approve of them as they stand?

Mr. LOVE. No, sir; I did not say they were absurd, I said they were poor.

Senator FLETCHER. Poor? In what respects do you consider them poor; and in what respect do you think from the standpoint of the Government they could be improved?

Mr. LOVE. Judge Ballinger told me in Seattle to write him on that subject, and my report is on record in which I recommended that the policy favored by Mr. Roosevelt at the time he adopted the leasing of coal lands not only in Alaska but all over the country. Now, the coal land is poor there—I mean the coal laws—because one man can not work his claim, and the result is that sooner or later—it might be years after their entry, but sooner or later—the claims must be sold to some one concerned; that is, in enough area to make it workable, and the result is that they get a large sum of money for their claim, and that is added to the price of the investment, of course, to the amount invested, and the public must always pay for that added price without any added value.

Senator FLETCHER. Now, do I understand that, based on your experience as an attorney and a special agent, both in the States and in Alaska, and your observations of conditions generally, that you favor the policy of leasing the mineral lands on a royalty to the Government?

Mr. LOVE. Coal lands, yes, sir.

Senator FLETCHER. Well, would that apply also to other mineral lands?

Mr. LOVE. No, sir; not necessarily. The mining of other minerals is a very different proposition from coal mining.

Senator FLETCHER. Well, do I understand that you would not favor that policy with reference to other mineral lands in Alaska, other than coal lands?

Mr. LOVE. Well, I have not ever given that question enough thought to answer that.

Senator FLETCHER. You know, do you not, that the Yukon people pay a royalty to Canada?

Mr. LOVE. Yes, sir.

Senator FLETCHER. You would not express any opinion as to whether you think that would be a wise policy on the part of the Government or not?

Mr. OLMSTED. Is that on gold, Senator?

Senator FLETCHER. Just the minerals. I mean on all precious minerals.

Mr. LOVE. On gold?

Senator FLETCHER. Yes, and copper, too.

Mr. LOVE. They do not mine any copper there, you know.

Senator FLETCHER. In Alaska?

Mr. LOVE. Oh, no; in the British—

Senator FLETCHER. I know; I say I refer to the conditions in the Yukon there, and ask whether you would advise applying that rule to the mineral lands in Alaska, gold and copper?

Mr. LOVE. No; I wouldn't with gold, because, as everyone knows, there are not many who succeed in making anything out of gold mining. It is too risky an undertaking to add to its burden in that way, in my opinion.

Senator FLETCHER. Let me ask your view as to another question. Whether or not you would favor, as a wise policy on the part of the Government, the Government owning, equipping, and operating the railroads of Alaska?

Mr. LOVE. It is the only way; we need them desperately at present, and we would stand for a good deal in order to get transportation, you know, if that is the only way. I think a better way, though, would be for the Government to underwrite, as it were, the bonds.

Senator FLETCHER. Would it not be better for the Government to operate and own the railroads in Alaska—build them, and equip them, and operate them—than to have them in the hands of a monopoly?

Mr. LOVE. Unless they can control that monopoly rightly; yes, sir. I would say this: The Government telegraph in Alaska, I think, is a great success.

Senator FLETCHER. Are you interested in mining at all in Alaska, Mr. Love?

Mr. LOVE. Yes, sir; a little.

Senator FLETCHER. At what point and in what connection?

Mr. LOVE. I am mining a little this winter down at Ididorod.

The CHAIRMAN. Where?

Mr. LOVE. In the Ididorod; that was a new tract last fall.

The CHAIRMAN. That was on the Kuskokwim?

Mr. LOVE. It is over the divide, toward the headwaters of the Tanana.

Mr. OLMSTED. A new tract of what?

Mr. LOVE. Gold, it is supposed to be. I have mined at different times in the Tanana Valley. I have never struck it.

The CHAIRMAN. That is all gold mining?

Mr. LOVE. Yes, sir.

The CHAIRMAN. Placer mining?

Mr. LOVE. Yes, sir.

Mr. VERTREES. Did you say gold or coal when you said you were interested?

Mr. JAMES. You said gold, did you not?

Mr. LOVE. I said gold. I have never had anything to do with coal.

Senator FLETCHER. You have never been interested in any coal lands?

Mr. LOVE. No, sir; absolutely.

Mr. JAMES. Who was Secretary of the Interior when Mr. Loeb wrote you the letter that you had been acquitted of these charges?

Mr. LOVE. Why, Mr. Garfield.

Mr. JAMES. Secretary Garfield.

Mr. LOVE. It says Secretary Garfield made the report, it says, to the President in the matter.

Mr. JAMES. I think it used the words Secretary of the Interior, does it not?

Mr. LOVE. Oh, I beg your pardon. But on June 3 he was Secretary.

Mr. JAMES. I know, but the letter does not say that; it says Secretary of the Interior.

Mr. LOVE. No, sir.

Mr. JAMES. That is what I thought. I understood you yesterday to make some criticism to Secretary Garfield about some request you made of him about communicating with you directly and sending you back a letter.

Mr. LOVE. Yes, sir; I sent him a private letter and asked the return of it.

Mr. JAMES. He treated you all right in that matter, did he not, in that letter there?

Mr. LOVE. I suppose so.

Mr. JAMES. The Secretary of the Interior wrote the President that you were not guilty?

Mr. LOVE. Yes, sir.

Mr. JAMES. He reported to the President that you were not guilty?

Mr. LOVE. Yes, sir; but he did not return the private letter, though.

Mr. JAMES. I know. The point I am asking you about is your criticism of yesterday. Do you want that to stay in the record now, in view of the fact that you are criticising the man who after passing on all the facts found that you were not guilty?

Mr. LOVE. It may stay in the record; yes, sir.

Mr. JAMES. You desire that to stay in the record?

Mr. LOVE. Yes, sir.

Mr. JAMES. All right.

Mr. BRANDEIS. Mr. Love, you stated in answer to Mr. Vertrees that Mr. Mullen, with whom you were intimate, who is the father of Ignatius Mullen, one of the Cunningham coal claimants, that you were intimate with him, and your knowledge of him was one of the reasons which inclined you to believe that the Cunningham claims were all right?

Mr. LOVE. Yes, sir.

Mr. BRANDEIS. Well, now, this Mr. Mullen was also very intimate with Mr. Dudley, was he not?

Mr. LOVE. Yes; and no.

Mr. BRANDEIS. They occupied the same office, did they not?

Mr. LOVE. Yes, sir.

Mr. BRANDEIS. They were right next to one another, were they not?

Mr. LOVE. Oh, yes, sir.

Mr. BRANDEIS. And a large number of communications were addressed to both of them, were they not?

Mr. LOVE. They were always addressed to both of them practically, from the department, I mean.

Mr. BRANDEIS. Yes; a large number of the communications which come out of that office are signed by both of them, are they not?

Mr. LOVE. Yes, sir.

Mr. BRANDEIS. Now, do you think, from your knowledge of the practice of the office and the juxtaposition of these two gentlemen in the same building or room, possibly that Mr. Mullen knew of this statement of Mr. Dudley about the Baker affidavit where he says "You know, we know, and the department knows" that all these are going into one company?

Mr. LOVE. I do not know, but I doubt if Mr. Mullen ever saw that letter.

Mr. BRANDEIS. I ask you whether from your knowledge of the relations of these two persons, physical and official, that Mr. Muller would have been likely to know about it?

Mr. LOVE. It would have been quite probable, but I do not think he ever saw that letter.

Mr. BRANDEIS. This is official correspondence, and a copy of it would have been open to Mr. Mullen just as it would to Mr. Dudley would it not?

Mr. LOVE. Yes, sir; there is no doubt about that, but they run their offices very much by themselves. Mr. Mullin stays in his office with the door closed, constitutionally.

Mr. GRAHAM. Mr. Mullin, or the door, as to the constitutionally?

Mr. JAMES. Does he do that for the purpose of keeping the Constitution out of the room?

Mr. LOVE. You are a constitutional lawyer; I don't know, sir.

Mr. BRANDEIS. Now, Mr. Love, there is another matter that Mr. Vertrees asked you about, and I understood you to say in answer to his question that the only matter which you suggested to the local land office or the register and receiver in that letter of August 1 was a legal question?

Mr. LOVE. Yes, sir.

Mr. BRANDEIS. Did you not also—

Mr. LOVE. I suggested—I called their attention to the legal question and inclosed the affidavit, and then I said that likely or perhaps something to that effect, that the department might prefer to examine these by some one other than myself—is not that what I said?

Mr. BRANDEIS. What you say is very near that.

Mr. LOVE. It is this: I recommend that these entries be not allowed but sent to the office here and the whole thing submitted to the office.

So that at this time, Mr. Brandeis, I had in a way been superseded at least my territory—I had not been superseded, as I understand it but my territory had been invaded, and I no longer felt that I was altogether in charge.

Mr. BRANDEIS. Well, now, what the exact words that you have stated were, "in view of the foregoing"—that is, the facts which you have stated in which you raised the legal question—

and of the fact that the department may wish to make investigation of these entries with others of similar character in Alaska, otherwise than through myself, I would respectfully recommend that these cases be forwarded to the General Land Office without entry at this time, that it may not be embarrassed in the premises.

Mr. LOVE. Yes, sir.

Mr. BRANDEIS. Now, this investigation which you thought might be made by some one other than yourself was an investigation not into the law, but into the fact, was it?

Mr. LOVE. Oh, into the whole affair, if they wanted to go into it.

Mr. BRANDEIS. But the investigation which would be made by special agent would not be a legal investigation. That would be made by the law officer, would it not?

Mr. LOVE. That is what I said—the whole thing.

Mr. BRANDEIS. Yes, but I asked you specifically, was not the thing you had in mind in saying that investigation by someone else that that was an investigation into facts that you had in mind?

Mr. LOVE. Not altogether; no, sir; let me explain. For instance, in these land investigations, the law is practically always involved; you must know the law, and in a way pass on it yourself as you investigate. To illustrate: A homesteader is allowed to cut timber on the clearing of the land for cultivation and to sell it if the money goes back on the place. Now, I am an agent. I came along and find a homesteader has cut timber. Well, I won't stop there. Under certain conditions that is allowable. I would go on and find it, and if I found out that he had cut it right and disposed of it lawfully it would never go into the record at all. Now, this was the case with the Cunninghams. You discover that they have done various things after entry. Unless you believe that they were in good faith at entry—if you believe they were in good faith at entry you would ignore what you found that they had done after entry because of the law. Judge Beatty, of Portland, Oreg., deleted that point many years ago.

Mr. BRANDEIS. Apparently I have not made clear the point that I endeavored to bring out.

Mr. LOVE. I have tried to answer your questions to the best of my ability.

Mr. BRANDEIS. You found out certain facts in regard to these requirements. You had found them out before?

Mr. LOVE. Yes, sir.

Mr. BRANDEIS. But you heard certain statements, or thought you had heard a certain statement, from Commissioner Ballinger as to the law which made you feel it your duty to call attention to the facts which you then knew, and that you did by sending it to the General Land Office in Washington so that they might consider that point of view upon the facts upon which you reported?

Mr. LOVE. Yes, sir.

Mr. BRANDEIS. Now, when you wrote this letter that was what you had in mind, was it not, when you speak of "in view of the foregoing?"

Mr. LOVE. This letter of August 1?

Mr. BRANDEIS. Yes. And did not this other statement, "the department may wish to make investigations of these entries otherwise than through myself," have reference to investigations into facts?

Mr. LOVE. Well, it would naturally be facts for the most part, but the question of law that was involved in the facts at the same time,

Mr. BRANDEIS. That is all I care to ask.

The VICE-CHAIRMAN. Are you through with the witness?

Mr. VERTREES. We are through with him.

The VICE-CHAIRMAN. You are discharged, Mr. Love.

Mr. BRANDEIS. Now, do you think, from your knowledge of the practice of the office and the juxtaposition of these two gentlemen in the same building or room, possibly that Mr. Mullen knew of this statement of Mr. Dudley about the Baker affidavit where he says, "You know, we know, and the department knows" that all these are going into one company?

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Mr. LOVE. Well, it would naturally be facts for the most part, but any question of law that was involved in the facts at the same time, too.

Mr. BRANDEIS. That is all I care to ask.

The VICE-CHAIRMAN. Are you through with the witness?

Mr. VERTREES. We are through with him.

The VICE-CHAIRMAN. You are discharged, Mr. Love.

TESTIMONY OF FRANK L. SPAULDING.

Frank L. Spaulding, having been first duly sworn by the vice-chairman, testified as follows:

Mr. VERTREES. You are Mr. Frank L. Spaulding?

Mr. SPAULDING. Yes, sir.

Mr. VERTREES. What is your age?

Mr. SPAULDING. Thirty-seven.

Mr. VERTREES. Where do you live?

Mr. SPAULDING. At Cheyenne, Wyo.

Mr. VERTREES. You are acquainted with Mr. Louis R. Glavis, who has been a witness in this case?

Mr. SPAULDING. Yes, sir.

Mr. VERTREES. How long have you known Mr. Glavis?

Mr. SPAULDING. Since about September 1, 1905.

Mr. VERTREES. He was at one time Chief of the Division of Field Service, located at Seattle, was he not?

Mr. SPAULDING. Yes, sir.

Mr. VERTREES. Were you employed in the office at that time in any capacity?

Mr. SPAULDING. He was chief there until April—April, 1909. He was Chief of Field Division.

Mr. VERTREES. You mean he began to be chief?

Mr. SPAULDING. Yes, sir.

Mr. VERTREES. When did he cease to be chief?

Mr. SPAULDING. On September 18, I think it was.

Mr. VERTREES. 1909?

Mr. SPAULDING. Yes, sir.

Mr. VERTREES. Now, were you there in the office during that time?

Mr. SPAULDING. Yes, sir.

Mr. VERTREES. In what capacity?

Mr. SPAULDING. Most of the time I was clerk and special disbursing agent.

Mr. VERTREES. Clerk and special disbursing agent?

Mr. SPAULDING. Yes, sir.

Mr. VERTREES. Who succeeded Mr. Glavis?

Mr. SPAULDING. Andrew Christensen.

Mr. VERTREES. And that you think was on the 18th of September, 1909?

Mr. SPAULDING. I am very sure it was.

Mr. VERTREES. Now, as clerk and disbursing agent what were your duties?

Mr. SPAULDING. Keeping track of the accounts and paying the men in the division.

Mr. VERTREES. Do you know the fact that Mr. Glavis was absent in Seattle in August, 1909, and returned about the first of September?

Mr. SPAULDING. Yes, sir.

Mr. VERTREES. How long was he absent?

Mr. SPAULDING. Practically all the month.

Mr. VERTREES. Do you know where he went?

Mr. SPAULDING. I did not know at the time.

Mr. VERTREES. Are you able to state now?

Mr. SPAULDING. I believe he was in different places.

Mr. VERTREES. The principal place, Mr. Spaulding. He went East to see the President, did he not?

Mr. SPAULDING. From the records it seems he went to Spokane, Chicago, Boston, and Beverly.

Mr. VERTREES. That is the trip I have in mind.

Mr. SPAULDING. Yes, sir.

Mr. VERTREES. Now, when he returned did he submit any account to you?

Mr. SPAULDING. He gave me a memorandum in the office at the time to make up on the typewriter.

Mr. VERTREES. He gave you a memorandum of his account for you to make up?

Mr. SPAULDING. Yes, sir.

Mr. VERTREES. What do you mean by "for you to make up?"

Mr. SPAULDING. I was to do the clerical work.

Mr. VERTREES. The memorandum was in pencil, was it?

Mr. SPAULDING. If I remember aright; yes, sir.

Mr. VERTREES. And when you say to make it up you mean that you were to put it in typewritten form so that it could be sworn to?

Mr. SPAULDING. Yes, sir.

Mr. VERTREES. The regulations require all accounts before they are paid to be presented in form and duly verified under oath, do they not?

Mr. SPAULDING. Yes, sir.

Mr. VERTREES. Did Mr. Glavis at that time have any funds in his hands as agent of the Government?

Mr. SPAULDING. Yes, sir.

Mr. VERTREES. Is that the account that you refer to [indicating], which you say Mr. Glavis gave you to make up?

Mr. SPAULDING. Yes, sir.

Mr. VERTREES. I ask that this paper here shown to the witness be made a part of the record, Mr. Chairman.

Mr. OLMSTED. Is that the paper which Mr. Glavis handed the witness or the paper which the witness made up?

Mr. VERTREES. The paper which Mr. Glavis handed the witness.

The VICE-CHAIRMAN. It is admitted.

Mr. MADISON. Let us have it read.

Mr. JAMES. Can you not state the substance of it briefly?

Mr. VERTREES. I think it is not necessary to read it. The particular thing I wanted to get at is one item of \$55. The total account is \$386.93, which was paid by check of September 2, 1909, drawn by Mr. Glavis, payable to himself, and collected that day, and there is an item of \$55 paid a stenographer at Chicago for work there on the report made to the President. That is the only item I wish to bring to the attention of the committee.

(The account referred to is as follows:)

Aug. 4. N. P. Ry. Co., fare, Portland, Ore., to Seattle, Wash.....	\$5. 60
N. P. Ry. Co., sleeper, Portland, Ore., to Seattle, Wash.....	2. 00
Transfer baggage, hotel to depot, Portland, Ore.....	. 50
Bus fare, hotel to depot, Portland, Ore.....	. 25
5. Fee to porter on sleeper.....	. 25
Transfer baggage, depot to hotel, Seattle, Wash.....	. 25
6. N. P. Ry. Co., sleeper, Seattle to Spokane, Wash.....	2. 50
Transfer baggage, hotel to depot, Seattle, Wash.....	. 50
7. To Amias Flexner, Portland, Ore., for.....	5. 60
Fee to porter on sleeper.....	. 25
Transfer baggage, depot to hotel, Spokane.....	. 50
10. Transfer baggage, hotel to depot, Spokane.....	. 50
N. P. Ry. Co., sleeper, Spokane, Wash., to St. Paul, Minn.....	9. 50

2560 INVESTIGATION INTERIOR DEPT. AND BUREAU OF FORESTRY.

Aug. 11. Fee to porter on sleeper.....	\$0.25
12. Fee to porter on sleeper.....	.25
13. Fee to porter on sleeper.....	.25
Pullman parlor car fare, St. Paul, Minn., to Chicago, Ill.....	1.25
Bus fare, depot to hotel, Chicago.....	.50
Transfer baggage, depot to hotel, Chicago.....	.50
15. Bus fare, hotel to depot, Chicago.....	.50
Transfer baggage, hotel to depot, Chicago.....	.50
To Lorene Sheetz, Chicago, Ill., for typewriting 146 pages & 2 carbon copies, at \$55.00 per job (voucher 1).....	55.00
16. Fee to porter on sleeper.....	.25
Transfer baggage, depot to house, New York City.....	.50
N. Y., N. H. & H., sleeper, New York City to Boston, Mass.....	1.50
17. Fee to porter on sleeper.....	.25
Boston & Maine R. R., fare, Boston to Beverly, Mass. (no reduction round trip ticket).....	.35
Bus fare, depot to hotel, Beverly, Mass.....	.25
	84.70
18. To Warner Livery Stable, Beverly, Mass., hire hack & driver, no expenses, to country & return, from 2.30 p. m. to 5.30 p. m., Aug. 18th, at \$1.50 per first hour & \$1.00 each succeeding hour (V. 2).. B. & M. R. R., fare, Beverly to Boston, Mass.....	3.50 .35
20. To ———, Boston, Mass., for copy 3 pages legal cap, at 35 cts. per page & six pages carbon copy at 5 cts. per page (V. 3).....	1.35
23 N. Y., N. H. & H., sleeper, Boston, Mass., to New York City.....	1.50
24. Fee to porter on sleeper.....	.25
Transfer baggage, house to depot, New York City.....	.50
N. Y. Central Ry., sleeper, New York City to Chicago, Ill.....	5.00
Telegraph message from Albany, N. Y., to Ella Shartell, Seattle, Wash. (23 words).....	.46
25. Fee to porter on sleeper.....	.25
Transfer baggage, depot to hotel, Chicago, Ill.....	.50
Bus fare, depot to hotel, Chicago, Ill.....	.50
26. Telegraph message from Chicago to Ella Shartell, Seattle, Wash., 26 words.....	.47
29. C. N. W. Ry., sleeper, Chicago to St. Paul, Minn.....	2.00
Bus fare, hotel to depot, Chicago.....	.50
Transfer baggage, hotel to depot, Chicago.....	.50
30. Fee to porter on sleeper.....	.25
31. Fee to porter on sleeper.....	.25
Notary fee to this account.....	.50
Total.....	108.93
Per diem, Aug. 1 to Aug. 31, 31 days, at \$3.....	93.00
Salary, Aug. 1 to Aug. 31, at \$2,220.00 per annum.....	185.00
	386.93

TRANSPORTATION REQUESTS.

- Aug. 10—T. R. 47913, N. P. Ry. Co., fare, Spokane, Wash., to Chicago, Ill. (\$46.70).
 15—47914, Penn. R. R. Co., fare, Chicago, Ill., to New York City (\$20.00).
 47915, Penn. R. R. Co., berth & extra fare, Chicago, Ill., to New York
 City (\$15.00).
 16—47916, N. Y., N. H. & H. R. R., fare, New York City to Boston, Mass.
 (\$4.65).
 23—47917, N. Y., N. H. & H. R. R., fare, Boston, Mass., to New York City
 (\$4.65).
 24—47918, N. Y. C. R. R., fare, New York City to Chicago, Ill. (\$24.00).
 27—47919, C. N. W. Ry. Co., fare, Chicago, Ill., to Portland, Ore. (\$56.90).
 47920, Pullman Co., berth, St. Paul, Minn., to Seattle, Wash. (\$12.00).

Mr. VERTREES. Mr. Spaulding, do you recall that there is such an item in that account?

Mr. SPAULDING. Yes, sir.

Mr. VERTREES. Do you remember the amount of it?

Mr. SPAULDING. It is \$55.

Mr. VERTREES. The amount of the account is how much, in the aggregate?

Mr. SPAULDING. \$386.93.

Mr. VERTREES. Look at that check [indicating] and see what you know about that? I here show the witness a check dated September 2, 1909, No. 64, dated Seattle, Wash., payable to Louis R. Glavis, for \$386.93, and drawn by him as special agent and special disbursing agent on the National Bank of Commerce of Seattle. I show you that and ask you first in whose handwriting is the written part of the check?

Mr. SPAULDING. It is Mr. Glavis's handwriting.

Mr. VERTREES. All of it?

Mr. SPAULDING. Yes, sir.

Mr. VERTREES. Look on the back of it and see if any indorsements appear there?

Mr. SPAULDING. It is his own signature.

Mr. VERTREES. Mr. Glavis's signature?

Mr. SPAULDING. Yes, sir.

Mr. VERTREES. Is there any other writing on the back of it?

Mr. SPAULDING. I do not see any.

Mr. VERTREES. You mean by that that there is not any, do you?

Mr. SPAULDING. Yes, sir.

Mr. VERTREES. Does the bank's indorsement on the check show when it was paid?

Mr. SPAULDING. Yes, sir; it says September 2.

Mr. VERTREES. When was it drawn?

Mr. SPAULDING. September 2.

Mr. VERTREES. Is that the check drawn for the account which you have filed?

Mr. SPAULDING. According to the records of the land office it is.

Mr. VERTREES. Mr. Chairman, I wish now to put that check in evidence, but will ask permission to file a copy and let that be returned to the department as their voucher.

The VICE CHAIRMAN. If there is no objection that will be done.

(The check referred to is in the words and figures following:)

[Copy.]

No. 64.
Voucher 23.

SEATTLE, WASHINGTON, September 2, 1909.

THE NATIONAL BANK OF COMMERCE.

United States Depositary.

Pay to the order of Louis R. Glavis, \$386.93, Three hundred eighty-six 93/100 Dollars.

P A I D.

LOUIS R. GLAVIS,
Special Agt., & Special Disb. Agt.

Paying No. 2.
Sept. 2, 1909.
Natl. Bank of Commerce.

Protecting Public Lands, Timber,
etc., 1909 & 1910.

Mr. VERTREES. What date was that presented to you, that account?

Mr. SPAULDING. I could not say exactly; it was written about the first week in September.

Mr. VERTREES. Would you say it was the date that check was drawn?

Mr. SPAULDING. Yes, sir.

Mr. VERTREES. Was it before the check was drawn?

Mr. SPAULDING. I think he made that memorandum and then drew the check.

Mr. VERTREES. That is what I am asking you. The check is dated the 2d of September.

Mr. SPAULDING. Yes, sir.

Mr. VERTREES. And it is your recollection that that is the day he handed you that memorandum, is it?

Mr. SPAULDING. It was lying on my desk when I went there; yes, sir.

Mr. VERTREES. When you came in you found it lying on your desk?

Mr. SPAULDING. Yes, sir.

Mr. VERTREES. And later on Mr. Glavis came to you about that \$55 item?

Mr. SPAULDING. Yes, sir; after I had written up the account for him.

Mr. VERTREES. You wrote up the account? You mean by that that you put it in the form to be sworn to?

Mr. SPAULDING. Yes, sir.

Mr. VERTREES. But he had collected the check, had he?

Mr. SPAULDING. According to the record, he had; yes, sir.

Mr. VERTREES. How long after this 2d of September was it that he came to you about that \$55 item?

Mr. SPAULDING. I do not remember exactly, because I was in a hurry to fix it up for him, because there were other vouchers with that account, so that the account could go up.

Mr. VERTREES. Leave that out and go back to dates and times. How long after would you say it was?

Mr. SPAULDING. I would say it was somewhere between the 10th and 16th.

Mr. VERTREES. The 10th and 16th of September?

Mr. SPAULDING. Yes, sir.

Mr. VERTREES. What did he want you to do? What did he ask and demand of you to do with reference to that item of \$55?

Mr. SPAULDING. He just wanted to know if I could not cut out that item of \$55. I supposed he changed his mind—

Mr. VERTREES. What did he suggest to you as to the way to do it when you told him that it could not be done?

Mr. SPAULDING. I told him the item could not very well be cut out; that the amount of the account had to agree with the amount of the check.

Mr. VERTREES. What did he say?

Mr. SPAULDING. He wanted to know if I could not make it look as though it were an error in addition.

Mr. VERTREES. Did he not ask you if you could not give them the sum totals and leave that \$55 charge out, and look as though it was an error in addition?

Mr. SPAULDING. I believe he did.

Mr. VERTREES. That is what he asked you to do?

Mr. SPAULDING. Yes, sir.

Mr. VERTREES. Now, in point of fact, had he then sworn to the account that you had made up for him?

Mr. SPAULDING. No, sir.

Mr. VERTREES. Did you do what he asked you to do?

Mr. SPAULDING. I left the account just in the position it was.

Mr. VERTREES. Do you know whether he has ever sworn to the account or not?

Mr. SPAULDING. No, sir.

Mr. VERTREES. He did not return it to you, did he?

Mr. SPAULDING. Yes, sir; it was returned to me and laid on my desk for some time, and I handed it back to him.

Mr. VERTREES. What was returned to you?

Mr. SPAULDING. The typewritten form that I fixed.

Mr. VERTREES. Was it sworn to?

Mr. SPAULDING. No, sir.

Mr. VERTREES. After it had laid there for some time you handed it back to him, and that was the last you knew of it?

Mr. SPAULDING. Yes, sir.

Mr. VERTREES. And you think this was between the 10th and 16th of September?

Mr. SPAULDING. I remember giving it back to him on the 18th with two others for him to have sworn to.

Mr. VERTREES. What day was he removed?

Mr. SPAULDING. September 18.

Mr. VERTREES. Was that the day you handed it back to him, the 18th?

Mr. SPAULDING. Yes, sir—no; it was either that day or the next Monday morning when he came in. I do not remember.

Mr. MADISON. What was it that you handed back to him?

Mr. SPAULDING. The typewritten account that I fixed up from this memorandum.

Mr. VERTREES. You mean that it was a copy of that in addition to an affidavit in due and proper form?

Mr. SPAULDING. Yes, sir.

Mr. VERTREES. Does the regular form call for an affidavit as to its correctness?

Mr. SPAULDING. It always does.

Mr. VERTREES. I understand that, but I want you to say so.

Mr. SPAULDING. Yes, sir.

Mr. VERTREES. Did you change the figures in any way?

Mr. SPAULDING. Not that I remember.

Mr. VERTREES. You would remember it if you did, would you not?

Mr. SPAULDING. Yes, sir.

Mr. VERTREES. So you did not; is that right, that you did not?

Mr. SPAULDING. Yes, sir.

Mr. VERTREES. If I understand you, you did write it up and hand it over to him?

Mr. SPAULDING. Yes, sir.

Mr. VERTREES. And it was after he had gotten this typewritten form, due form, and between the 10th and 16th of September that he came back and returned the account, as you have stated?

Mr. SPAULDING. Yes, sir; along in there somewhere. I do not remember exactly.

Mr. VERTREES. You may examine Mr. Spaulding.

Mr. BRANDEIS. I will state, Mr. Chairman, that this witness I shall want retained and not discharged because we desire him in rebuttal of some matters. There are one or two questions that I would like to ask him now.

Mr. Spaulding, you had vouchers for a number, possibly a large number, of these items in Mr. Glavis's account, did you not?

Mr. SPAULDING. Yes, sir.

Mr. VERTREES. Was it before the check was drawn?

Mr. SPAULDING. I think he made that memorandum and then drew the check.

Mr. VERTREES. That is what I am asking you. The check is dated the 2d of September.

Mr. SPAULDING. Yes, sir.

Mr. VERTREES. And it is your recollection that that is the day he handed you that memorandum, is it?

Mr. SPAULDING. It was lying on my desk when I went there; yes, sir.

Mr. VERTREES. When you came in you found it lying on your desk?

Mr. SPAULDING. Yes, sir.

Mr. VERTREES. And later on Mr. Glavis came to you about that \$55 item?

Mr. SPAULDING. Yes, sir; after I had written up the account for him.

Mr. VERTREES. You wrote up the account? You mean by that that you put it in the form to be sworn to?

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Mr. SPAULDING. He just wanted to know if I could not cut out that item of \$55. I supposed he changed his mind—

Mr. VERTREES. What did he suggest to you as to the way to do it when you told him that it could not be done?

Mr. SPAULDING. I told him the item could not very well be cut out; that the amount of the account had to agree with the amount of the check.

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Mr. SPAULDING. He wanted to know if I could not make it look as though it were an error in addition.

Mr. VERTREES. Did he not ask you if you could not give them the sum totals and leave that \$55 charge out, and look as though it was an error in addition?

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Mr. VERTREES. That is what he asked you to do?

Mr. SPAULDING. Yes, sir.

Mr. VERTREES. Now, in point of fact, had he then sworn to the account that you had made up for him?

Mr. SPAULDING. No, sir.

Mr. VERTREES. Did you do what he asked you to do?

Mr. SPAULDING. I left the account just in the position it was.

Mr. VERTREES. Do you know whether he has ever sworn to the account or not?

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Mr. VERTREES. He did not return it to you, did he?

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Mr. SPAULDING. I remember giving it back to him on the 18th with two others for him to have sworn to.

Mr. VERTREES. What day was he removed?

Mr. SPAULDING. September 18.

Mr. VERTREES. Was that the day you handed it back to him, the 18th?

Mr. SPAULDING. Yes, sir—no; it was either that day or the next Monday morning when he came in. I do not remember.

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Mr. SPAULDING. Yes, sir.

Mr. VERTREES. And it was after he had gotten this typewritten form, due form, and between the 10th and 16th of September that he came back and returned the account, as you have stated?

Mr. SPAULDING. Yes, sir; along in there somewhere. I do not remember exactly.

Mr. VERTREES. You may examine Mr. Spaulding.

Mr. BRANDEIS. I will state, Mr. Chairman, that this witness I shall want retained and not discharged because we desire him in rebuttal of some matters. There are one or two questions that I would like to ask him now.

Mr. Spaulding, you had vouchers for a number, possibly a large number, of these items in Mr. Glavis's account, did you not?

Mr. SPAULDING. Yes, sir.

Mr. BRANDEIS. And the account as allowed by you and as made out by you, you found to be correct in every particular?

Mr. SPAULDING. Yes, sir.

Mr. BRANDEIS. And you had, among other things, a voucher for this item for \$55?

Mr. SPAULDING. Yes, sir.

Mr. BRANDEIS. Which represents the cost of the typewriting done on the letter or report to the President?

Mr. SPAULDING. I suppose so.

Mr. BRANDEIS. It was made, as you understand it, in Chicago?

Mr. SPAULDING. Yes, sir.

Mr. BRANDEIS. And that is a copy of that voucher for \$55, is it [indicating]?

Mr. SPAULDING. It looks like it; yes, sir.

Mr. BRANDEIS. You had, also, some vouchers for some other things, like the carriage which he used in going to the President's house at Beverly?

Mr. SPAULDING. Yes, sir.

Mr. BRANDEIS. And for some other typewriting which was done?

Mr. SPAULDING. Yes, sir.

Mr. BRANDEIS. Now, what Mr. Glavis wanted was that this item which appears in the account of \$55—

The VICE-CHAIRMAN. Do you wish that voucher to go in the record?

Mr. BRANDEIS. Yes, sir.

The VICE-CHAIRMAN. You have not offered it as yet.

Mr. BRANDEIS. I thank you, Mr. Chairman, I will offer it.

(The voucher is as follows:)

Department of the Interior, General Land Office. 4-160. Form approved by Comptroller of the Treasury April 11, 1908.

SUBVOUCHER FOR TRAVELING AND OTHER EXPENSES.

No. 1

AUGUST 15, 1909.

Received of L. R. Glavis, Chief of Field Division, fifty-five no /100 dollars in cash in full payment of following account:

To 96 pages copy, with 2 carbons and 51 pages, dictated with 2 carbons, at \$55 per job.....	\$55.00
Total.....	55.00

(Signed) LORENE SHEETZ,
918 First National Bank Bldg., Chicago, Ill.

(Not to be signed in duplicate.)

Mr. BRANDEIS. Now, what Mr. Glavis wanted was that this item that appears in the account of \$55, that that item for the typewriting of this report in Chicago, which was the cost of the original or ribbon copy and two carbons, should be cut out?

Mr. SPAULDING. Yes, sir.

Mr. BRANDEIS. That he afterwards came to you and wanted to reimburse the Government for that amount?

Mr. SPAULDING. That is what he said he was going to do; yes, sir.

Mr. BRANDEIS. And what he said was that he did not want the Government to pay for that report or transcript, as it was called, because they could call on him for all three copies, and that he wanted to retain one or more of the carbon copies, did he not?

Mr. SPAULDING. I do not remember him stating that, but that was my understanding of it.

Mr. BRANDEIS. That is your recollection, was it?

Mr. SPAULDING. Yes, sir.

Mr. BRANDEIS. Of what occurred?

Mr. SPAULDING. Yes, sir.

Mr. BRANDEIS. And you so stated in an affidavit, did you not, in substance?

Mr. SPAULDING. Yes, sir.

Mr. BRANDEIS. You stated that fact at a time shortly afterwards?

Mr. SPAULDING. I think in about November.

Senator ROOT. Is that affidavit in evidence?

Mr. BRANDEIS. No, sir; but I will read a portion of the affidavit. I will put the whole affidavit in.

Senator ROOT. If you are going to read from it, I think the whole had better be put in evidence.

(The affidavit referred to is as follows:)

STATE OF WYOMING, *County of Laramie, ss:*

I, Frank L. Spaulding, being duly sworn, depose and say: That during the months of August and September, 1909, I was a regular clerk in the office of the 17th field division of the General Land Office at Seattle, Washington, of which Louis R. Glavis was chief. I was doing both office work and field work; on Aug. 2, 1909, I was appointed a special disbursing agent and filed my bond which was approved, as I believe, Aug. 10, 1909. Under this appointment I did not make any disbursements until the latter part of September, 1909; that up to the time I made my first disbursements the disbursing for said division was done by Mr. Louis R. Glavis, chief of field division, and I, as his clerk, prepared his accounts, checks, etc., for his signature, approval, and transmittal.

On about the first days of September, 1909, and I think between the 1st and 7th, Mr. Louis R. Glavis presented to me the rough draft of his monthly salary, per diem and expense account (Form 4-152) for August, which I prepared on the typewriter ready to be sworn to and signed by Mr. Glavis. Included in this monthly account was an item of \$55.00 paid by Mr. Glavis to Miss Lorene Sheets, of Chicago, Ill., for stenographic service. After the account had all been written up by me on the typewriter and Mr. Glavis had been paid for it, he afterwards came to me and wanted the account rewritten, leaving out the item of \$55.00, and I told him it couldn't be done; that on account of the check calling for that certain amount that the account (meaning his 4-152 account) would have to call for the same amount. Mr. Glavis wanted to know if I couldn't make it read the same totals and leave that \$55.00 charge out, and make it look as though there was an error in addition. I told him it was a very peculiar amount to make an error in addition. I was not willing to comply with his request and did not do so, and up to the time I left Seattle, about October 12, 1909, so far as I know the account had not been fixed up and was still in his possession, with two other monthly accounts 4-152, which had been returned to be sworn to.

If I remember correctly this \$55.00 item called for one original and two carbon copies—so many sheets or folios. I took it for granted this was a charge for writing a report for Mr. Glavis sent to the President. My recollection is that Mr. Glavis said when we had the difference over eliminating the \$55.00 item that he did not want the Government to pay for the transcript because they could call on him for all three copies, as if they paid for them the copies would belong to the Government. That is the only reason I know of that he could have for wanting it done in that way, and he said he intended to refund the amount.

I, Frank L. Spaulding, do hereby certify that I drew up the foregoing affidavit on the typewriter myself on the 22nd day of November, 1909, in the office of the Chief of Seventh Field Division, Cheyenne; that the statements made in the affidavit are true and given under no restraint or duress or coercion, but are my free and voluntary acts and deeds. So help me God.

[SEAL.]

FRANK L. SPAULDING.

Sworn to before me this 23rd day of November, 1909.

MARGARET BAILEY, *Notary Public.*

My commission expires January 30, 1911.

Mr. BRANDEIS. I think that is all at the present time.

Senator ROOT. I would like to ask a question. Mr. Spaulding, will you not please look at the check that has been offered. I notice at the end what I take to be the account for "protecting public lands, timber, etc., 1909 and 1910."

Mr. SPAULDING. 1909 and 1910; yes, sir.

Senator ROOT. That is Mr. Glavis's handwriting?

Mr. SPAULDING. Yes, sir.

Senator ROOT. Was there an account kept in the office having that heading?

Mr. SPAULDING. All the checks written under that appropriation have that on them.

Senator ROOT. That was the title of the appropriation?

Mr. SPAULDING. Yes, sir.

Senator ROOT. And it covered all the expenses of the office?

Mr. SPAULDING. Well, yes, sir; under that; the accounts kept in that manner; yes, sir.

Senator ROOT. Did that cover all the expenditures of the office or only a portion?

Mr. SPAULDING. Except whenever they were expenses for hearings.

Senator ROOT. Then all the checks drawn in the office were charged to the account which is described there?

Mr. SPAULDING. Yes, sir.

Senator ROOT. Unless they were checks for expenses for hearings?

Mr. SPAULDING. Yes, sir.

Mr. BRANDEIS. How were the checks drawn for expenses of hearings? How were they charged?

Mr. SPAULDING. In the same way, instead of "Protecting public lands, timber, etc., 1909 and 1910," it would be "Expenses of hearings, 1909 and 1910."

Mr. BRANDEIS. And those were the only accounts you had as disbursing agent?

Mr. SPAULDING. Yes, sir.

Mr. VERTREES. Could any of this fund be expended for any other purpose than for protecting public lands, timber, etc.?

Mr. SPAULDING. No, sir.

Mr. VERTREES. Do not the rules require none of it to be paid out except for an account verified by affidavit of the party claiming it?

Mr. SPAULDING. The affidavit was part of the account.

Mr. VERTREES. Always part of the account.

Mr. BRANDEIS. I would like, Mr. Vertrees, to have the account as rendered, with affidavit attached, go into the records. I suppose he has a copy of it.

Mr. VERTREES. Has any of it been rendered? Do you know of any having been rendered other than that pencil one?

Mr. SPAULDING. Yes, sir; I saw a copy of one over in the Land Office the other day.

Mr. BRANDEIS. With the affidavit attached?

Mr. SPAULDING. Yes, sir; the affidavit is printed there, and the notary public's certificate.

Mr. BRANDEIS. I would like that to go in the record.

Mr. OLMSTED. Was that affidavit signed by anybody?

Mr. SPAULDING. I do not know whether it was or not. I suppose Mr. Glavis signed; yes, sir. I do not know whether it was ever sworn to.

Mr. VERTREES. Here is one of a very recent date.

Mr. JAMES. This check is dated September 2, 1909.

Mr. SPAULDING. Yes, sir.

Mr. JAMES. When was it that Mr. Glavis came to you and talked to you about taking out the \$55?

Mr. SPAULDING. It was some time after I had written it up. It would be some time during the month of September, before the 18th, because he left on the 18th.

Mr. JAMES. Was it about the time he was discharged?

Mr. SPAULDING. It was a little previous to that.

Mr. JAMES. And the understanding you had of the reason he wanted that done was, if he allowed the Government to pay for it they could take all those copies out of his hands, and he wanted to keep a copy?

Mr. SPAULDING. That was my understanding.

Mr. JAMES. Did he explain it to you in that way?

Mr. SPAULDING. I do not know that he did.

Mr. JAMES. How did you get that understanding?

Mr. SPAULDING. Because that is the only one that I could have of it.

Mr. JAMES. Did you ask him for any reason for it?

Mr. SPAULDING. No, sir.

Mr. JAMES. At the time?

Mr. SPAULDING. I do not remember that I did.

Mr. OLMSTED. Why did he say he wanted the \$55 item taken out?

Mr. SPAULDING. I do not remember that he said, but he just wanted me to cut that item out, and I supposed because he wanted to keep the copies himself.

Mr. BRANDEIS. He did not want anything else cut out about the other expenses of his trip to the President, such as his carriage hire from Beverly Station to the President's house, and all these other items; he did not question those?

Mr. SPAULDING. No, sir.

Mr. BRANDEIS. It was only this item for the three copies of the report?

Mr. SPAULDING. Yes, sir.

Mr. BRANDEIS. Which you made at Chicago, when, as you understand it, he was there with Shaw?

Mr. SPAULDING. It was just that one single charge in that voucher.

Mr. VERTREES. He wanted it cut out in the way you have stated here?

Mr. SPAULDING. He wanted it cut out, and when I told him that I could not see very well how I could cut it out, he wanted to know if I could not cut it out and make it appear as an error in addition.

Mr. VERTREES. And he had then got the money and had had it for some time?

Mr. SPAULDING. He got the money before the account was written up. He was responsible for that.

Senator FLETCHER. Was it his idea to keep the money or return it to the Government?

Mr. SPAULDING. He informed me that he would refund it.

Mr. JAMES. So the purpose of making the error in addition was not to cheat the Government out of the \$55 at all?

Mr. SPAULDING. No, sir.

Mr. JAMES. Because he said then that he wanted to give it back.

Mr. SPAULDING. Certainly; because if he did not charge it up he would not be obliged to put it in.

Mr. JAMES. So the idea of making the error in addition was to cut this out, and instead of its being the amount, it was to make \$55 less; that was it?

Mr. SPAULDING. Yes, sir.

Mr. JAMES. He was to return the money to you. There was no pretense—

Mr. SPAULDING. He was to return the money to the Treasury.

Mr. JAMES. There was no pretense that he was trying to swindle the Government out of the \$55 and asking you to be a party to it by making the error in addition?

Mr. SPAULDING. I never looked at it in that way.

Mr. MADISON. His proposition was to cut that out—"change your sum total, and I will return the \$55 to the Treasury."

Mr. SPAULDING. No; that item was to be cut out and the total was to be left the same.

Mr. MADISON. The total was to be left the same?

Mr. SPAULDING. Yes, sir.

Mr. MADISON. And then he would return the \$55 to the Treasury?

Mr. SPAULDING. Yes, sir.

Mr. BRANDEIS. You have stated, Mr. Spaulding, what your understanding was. I call your attention to this statement in your affidavit:

If I remember correctly, this \$55 item called for one original and two carbon copies—so many sheets or folios. I took it for granted this was a charge for writing the report for Mr. Glavis sent to the President. My recollection is that Mr. Glavis said that we had the difference over eliminating the \$55 item that he did not want the Government to pay for the transcript, because they could call on him for all three copies and if they paid for them the copies would belong to the Government. That is the only reason I know of that he could have for wanting it done in that way, and he said he intended to refund the amount.

Mr. SPAULDING. Yes, sir.

Mr. BRANDEIS. Now do you want, by the testimony you have now given, to change in any way, or to be understood as changing in any way, the statement which you made on the 23d day of November?

Mr. SPAULDING. That is my sentiment that I tried to express.

Mr. BRANDEIS. And that is now what you understand the facts to be?

Mr. SPAULDING. Yes, sir.

Senator ROOT. What was this affidavit, Mr. Spaulding, of the 23d of November?

Mr. SPAULDING. It was one that I was called upon to give by the General Land Office.

Senator ROOT. You were called upon by the General Land Office?

Mr. SPAULDING. Yes, sir.

Senator ROOT. By whom—who called on you?

Mr. SPAULDING. Mr. Baker, chief of field division, was the one who spoke to me about it.

Mr. BRANDEIS. Mr. Baker is your chief at Cheyenne?

Mr. SPAULDING. Yes, sir; he was at that time, and has been since.

Mr. BRANDEIS. Did Mr. Baker tell you that it was at the request of Mr. Christensen or whom?

Mr. SPAULDING. We had some correspondence there with reference to three or four things that he wanted me to make affidavits to.

Mr. BRANDEIS. That was the correspondence with Mr. Christensen, Mr. Glavis's successor?

Mr. SPAULDING. I am very sure this one was.

Mr. JAMES. How did the affidavit come to this committee?

Mr. BRANDEIS. It is one of the papers produced by the Department of the Interior, headed "affidavit relating to activities of Shaw and Glavis in inspiring charges against the Interior Department."

Mr. JAMES. It was on the files in the Land Office and sent up here?

Mr. BRANDEIS. It was sent here. Mr. Sleman can give us the date when it was sent in pursuance of a general call for certain classes of papers.

Senator SUTHERLAND. What is the date of the affidavit?

Mr. BRANDEIS. The date of the affidavit is November 23, 1909.

Mr. JAMES. Was the affidavit taken at the request of Glavis?

Mr. SPAULDING. No, sir; just at the request of the General Land Office.

Mr. MADISON. Do you know whether or not the \$55 has been returned?

Mr. SPAULDING. I do not know, sir.

Mr. MADISON. You do not know anything about that?

Mr. SPAULDING. I do not think it has been, because I have understood from them that the account had never been adjusted.

Mr. MADISON. This single account, you mean?

Mr. SPAULDING. This one account; yes, sir.

Mr. BRANDEIS. You mean by adjusted that the account has not been acted upon by the auditing department?

Mr. SPAULDING. Yes, sir.

Senator SUTHERLAND. Mr. Spaulding, you have been a stenographer for a good many years?

Mr. SPAULDING. Several.

Senator SUTHERLAND. Have you done custom work?

Mr. SPAULDING. No, sir; I can not say that I have done custom work.

Senator SUTHERLAND. You work on a salary?

Mr. SPAULDING. Yes, sir.

Senator SUTHERLAND. Do you know what the practice is among stenographers in charging for doing custom work, as for making charges for carbon copies? Do they make a separate charge for the carbon copies?

Mr. SPAULDING. Yes, sir.

Senator SUTHERLAND. And what relation does that bear to the original?

Mr. SPAULDING. About one-third the price.

Senator SUTHERLAND. That is, they add that to the amount of the charge?

Mr. SPAULDING. If they charge 15 cents a folio for the original, they will charge about 5 or 10 cents for the carbon.

Senator SUTHERLAND. For each additional carbon?

Mr. SPAULDING. Yes, sir.

Senator SUTHERLAND. Five or 10 cents additional?

Mr. SPAULDING. Yes, sir.

Mr. JAMES. In Chicago, would you say that they would do work of that sort for 15 cents a page?

Mr. SPAULDING. That is the only item that I ever saw from Chicago.

Mr. GRAHAM. Charges vary with location.

Mr. SPAULDING. I suppose they get whatever they can.

Mr. JAMES. Do you know, or have you ever worked in any but the one place, Cheyenne?

Mr. SPAULDING. The only experience I have had with that is paying vouchers with reference to testimony at hearings.

Mr. GRAHAM. I think the committee knows that charges for the same work would be different at different points.

Mr. SPAULDING. Yes, sir.

Senator SUTHERLAND. Whatever it may be, would there be any difficulty in separating the item of costs for one of these carbon copies from the remainder of the bill?

Mr. SPAULDING. He would be obliged to get a new voucher for it.

Senator SUTHERLAND. I mean originally; would there have been any difficulty in Mr. Glavis, for example, putting in a charge against the Government for the cost of the original and one carbon copy?

Mr. SPAULDING. No, sir; he could have done that.

Senator SUTHERLAND. Separate from the one carbon copy which he retained?

Mr. SPAULDING. He could have done that.

The VICE CHAIRMAN. Are there any further questions?

Mr. BRANDEIS. I just want to ask one question. You, of course, Mr. Spaulding, know nothing whatever about an arrangement which Mr. Glavis made with this Chicago stenographer, and whether it was on certain terms or certain other terms.

Mr. SPAULDING. No, sir; I only know by that voucher.

Mr. BRANDEIS. All you know is what the voucher states.

Mr. SPAULDING. Yes, sir.

Mr. GRAHAM. Or do you know whether the thought expressed by Senator Sutherland occurred to him at the time he was arranging the payment of this account?

Mr. SPAULDING. The first thing I knew about it was when I saw this account and that voucher, and that was some time after he had arranged the work and got it done.

Mr. BRANDEIS. That is all I care to ask. I believe it is understood that this witness is to be retained and not discharged.

(At 12 o'clock and 45 minutes p. m. the committee took a recess until 2 o'clock.)

AFTER RECESS.

The committee reassembled at 2 o'clock p. m.

The CHAIRMAN. The committee will please come to order.

Mr. VERTREES. I should like to call Miss Shartell.

TESTIMONY OF MISS ELLA M. SHARTELL.

Miss Ella M. Shartell, having first been duly sworn by the chairman, testified as follows:

Mr. VERTREES. I believe your name is Ella M. Shartell.

Miss SHARTELL. Yes, sir.

Mr. VERTREES. Now, we will have to trouble you to speak a little louder than you are generally accustomed to do, so that the gentlemen up at the other end of the table can hear.

Where do you live, Miss Shartell?

Miss SHARTELL. In Seattle, Wash.

Mr. VERTREES. How long have you lived there?

Miss SHARTELL. Since last June.

Mr. VERTREES. And were you engaged in some vocation or occupation there?

Miss SHARTELL. As stenographer in the office of the seventeenth field division.

Mr. VERTREES. Who was the chief of the division when you went there in June last?

Miss SHARTELL. Mr. Glavis was chief.

Mr. VERTREES. Where did you come from to Seattle?

Miss SHARTELL. From North Yakima, Wash.

Mr. VERTREES. Are you still employed there?

Miss SHARTELL. Yes.

Mr. VERTREES. Do you remember when Mr. Glavis ceased to be the chief of the division?

Miss SHARTELL. On September 18, 1909.

Mr. VERTREES. And who succeeded him?

Miss SHARTELL. Mr. Andrew Christensen.

Mr. VERTREES. What was Mr. Christensen's position at that time?

Miss SHARTELL. He was chief of the field division at Portland, Oreg.

Mr. VERTREES. Now, was Mr. Andrew Christensen transferred over to Seattle, or did he still continue to remain at Portland, but took charge of the Seattle district?

Miss SHARTELL. He continued at Portland, and took temporary charge at Seattle.

Mr. VERTREES. What I want to know more particularly, did he come over and make that his permanent headquarters, or does he stay over at Portland?

Miss SHARTELL. He stays up at Portland.

Mr. VERTREES. But he comes and goes back and forth?

Miss SHARTELL. Yes, sir.

Mr. VERTREES. Who is in charge in Seattle when he is not there?

Miss SHARTELL. I am.

Mr. VERTREES. And what is your position; what are you called?

Miss SHARTELL. Why, clerk.

Mr. VERTREES. Are you a stenographer also?

Miss SHARTELL. Yes.

Mr. VERTREES. And typewriter?

Miss SHARTELL. Yes.

Mr. VERTREES. Do you know the fact that before Mr. Glavis was removed, and sometime in the month of August, he left Seattle and went East?

Miss SHARTELL. Yes; he left about the latter part of July, I think it was.

Mr. VERTREES. And when did he return, Miss Shartell?

Miss SHARTELL. On the 2d of September.

Mr. VERTREES. The 2d day of September, 1909, he returned to Seattle?

Miss SHARTELL. Yes.

Mr. VERTREES. Did he come to the office that day?

Mr. VERTREES. Now, if I understand you, the letters that I have called the "concealed" letters were copied before you understood Mr. Glavis was informed that he was to be removed?

Miss SHARTELL. Yes.

Mr. VERTREES. And how long would you say it was after he came back before you copied those letters?

Miss SHARTELL. Why, as I remember it, I think it was about a week after he returned from the East.

Mr. VERTREES. So, assuming that he returned on the 2d, as you have stated, a week would put it something like the 9th?

Miss SHARTELL. Yes.

Mr. VERTREES. Your recollection is that it was about the 9th of September when you copied those letters?

Miss SHARTELL. That is my recollection.

Mr. VERTREES. Do you remember how many of those letters there were?

Miss SHARTELL. There were 24.

Mr. VERTREES. Twenty-four? Were those letters delivered to you singly, or together, or in different groups?

Miss SHARTELL. They were delivered all together.

Mr. VERTREES. Those 24 as one bunch or bundle?

Miss SHARTELL. Yes.

Mr. VERTREES. Who gave them to you?

Miss SHARTELL. Mr. Glavis.

Mr. VERTREES. What were your instructions?

Miss SHARTELL. He told me he wanted copies of those made and to put the other work aside until I had copied those; to go right ahead with them.

Mr. VERTREES. To give them the right of way, so to speak?

Miss SHARTELL. Yes.

Mr. VERTREES. And you did so?

Miss SHARTELL. Yes.

Mr. VERTREES. Then what did you do with them after you had copied them?

Miss SHARTELL. I handed them back to him—laid them on his desk. He was there.

Mr. VERTREES. Now, let me see. You say you handed them back to him, or laid them on his desk?

Miss SHARTELL. I laid them on his desk.

Mr. VERTREES. But he was present?

Miss SHARTELL. Yes; he was present.

Mr. VERTREES. You were working in the same room, were you?

Miss SHARTELL. No.

Mr. VERTREES. He worked in a different room?

Miss SHARTELL. Yes.

Mr. VERTREES. So you took them in his room and laid them on his desk when he was present?

Miss SHARTELL. Yes, sir.

Mr. VERTREES. You say that you laid them there—what do you mean by "them?"

Miss SHARTELL. The originals and the copies.

Mr. VERTREES. The copies you had made of all the 24?

Miss SHARTELL. Yes.

Mr. VERTREES. How many copies did you make of those letters?

Miss SHARTELL. Well, I can not remember exactly pertaining to them; but, as I said before, in all Alaskan matters I always made 3 carbons of everything.

Mr. VERTREES. Do you mean by that to have the committee to understand that while you do not remember definitely how many you did make, the course of business would have called for you to make 3?

Miss SHARTELL. Yes.

Mr. VERTREES. You know that you did make some carbon copies of those letters, do you not?

Miss SHARTELL. Yes.

Mr. VERTREES. Can you state that you are sure that you made as many as 2 of each?

Miss SHARTELL. Yes.

Mr. VERTREES. You laid them on his table. What passed then?

Miss SHARTELL. Well, nothing right then; the next day they were brought back to me to be initialed.

Mr. VERTREES. Who brought them back?

Miss SHARTELL. Mr. Glavis.

Mr. VERTREES. Let me understand that. When you laid them on his table, nothing was said?

Miss SHARTELL. No, sir.

Mr. VERTREES. And what time of the day was that?

Miss SHARTELL. It was in the evening.

The CHAIRMAN. Let me see if I understand it—were they the original letters the witness refers to, or the copies?

Mr. VERTREES. Both; the originals, with the carbon copies you had made, were they not?

Miss SHARTELL. Yes, sir.

Mr. VERTREES. And I also understood you to say that you feel quite sure there were as many as two carbon copies, and there may have been more?

Miss SHARTELL. Yes; there may have been more.

Mr. VERTREES. That is correct, is it?

Miss SHARTELL. Yes.

Mr. VERTREES. Nothing was said when you laid them on his table, but the next morning he brought them back to you?

Miss SHARTELL. Yes, sir.

Mr. VERTREES. That is, brought what—the letters or the copies?

Miss SHARTELL. The copies I had made.

Mr. VERTREES. For what purpose?

Miss SHARTELL. He told me to put my initials on all of them.

Mr. VERTREES. Did he say why?

Miss SHARTELL. He said to put my initials on them so that I would always know who had copied them; that anyone would always know who had copied them.

Mr. VERTREES. Did you do so?

Miss SHARTELL. Yes, sir.

Mr. VERTREES. I have, Mr. Chairman, those original letters, which have already been put in evidence and are copied in the record, and also one set of carbon copies. I have also a second set, which I have just obtained from Mr. Christensen, who was the successor of Mr. Glavis, and we will explain by him that both were found with the originals, but for the present I wish to present them to this witness.

Mr. VERTREES. Now, if I understand you, the letters that I have called the "concealed" letters were copied before you understood Mr. Glavis was informed that he was to be removed?

Miss SHARTELL. Yes.

Mr. VERTREES. And how long would you say it was after he came back before you copied those letters?

Miss SHARTELL. Why, as I remember it, I think it was about a week after he returned from the East.

Mr. VERTREES. So, assuming that he returned on the 2d, as you have stated, a week would put it something like the 9th?

Miss SHARTELL. Yes.

Mr. VERTREES. Your recollection is that it was about the 9th of September when you copied those letters?

Miss SHARTELL. That is my recollection.

Mr. VERTREES. Do you remember how many of those letters there were?

Miss SHARTELL. There were 24.

Mr. VERTREES. Twenty-four? Were those letters delivered to you singly, or together, or in different groups?

Miss SHARTELL. They were delivered all together.

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Mr. VERTREES. To give them the right of way, so to speak?

Miss SHARTELL. Yes.

Mr. VERTREES. And you did so?

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Mr. VERTREES. Then what did you do with them after you had copied them?

Miss SHARTELL. I handed them back to him—laid them on his desk. He was there.

Mr. VERTREES. Now, let me see. You say you handed them back to him, or laid them on his desk?

Miss SHARTELL. I laid them on his desk.

Mr. VERTREES. But he was present?

Miss SHARTELL. Yes; he was present.

Mr. VERTREES. You were working in the same room, were you?

Miss SHARTELL. No.

Mr. VERTREES. He worked in a different room?

Miss SHARTELL. Yes.

Mr. VERTREES. So you took them in his room and laid them on his desk when he was present?

Miss SHARTELL. Yes, sir.

Mr. VERTREES. You say that you laid them there—what do you mean by "them?"

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Mr. VERTREES. The copies you had made of all the 24?

Miss SHARTELL. Yes.

Mr. VERTREES. How many copies did you make of those letters?
Miss SHARTELL. Well, I can not remember exactly pertaining to them; but, as I said before, in all Alaskan matters I always made 3 carbons of everything.

Mr. VERTREES. Do you mean by that to have the committee to understand that while you do not remember definitely how many you did make, the course of business would have called for you to make 3?

Miss SHARTELL. Yes.

Mr. VERTREES. You know that you did make some carbon copies of those letters, do you not?

Miss SHARTELL. Yes.

Mr. VERTREES. Can you state that you are sure that you made as many as 2 of each?

Miss SHARTELL. Yes.

Mr. VERTREES. You laid them on his table. What passed then?

Miss SHARTELL. Well, nothing right then; the next day they were brought back to me to be initialed.

Mr. VERTREES. Who brought them back?

Miss SHARTELL. Mr. Glavis.

Mr. VERTREES. Let me understand that. When you laid them on his table, nothing was said?

Miss SHARTELL. No, sir.

Mr. VERTREES. And what time of the day was that?

Miss SHARTELL. It was in the evening.

The CHAIRMAN. Let me see if I understand it—were they the original letters the witness refers to, or the copies?

Mr. VERTREES. Both; the originals, with the carbon copies you had made, were they not?

Miss SHARTELL. Yes, sir.

Mr. VERTREES. And I also understood you to say that you feel quite sure there were as many as two carbon copies, and there may have been more?

Miss SHARTELL. Yes; there may have been more.

Mr. VERTREES. That is correct, is it?

Miss SHARTELL. Yes.

Mr. VERTREES. Nothing was said when you laid them on his table, but the next morning he brought them back to you?

Miss SHARTELL. Yes, sir.

Mr. VERTREES. That is, brought what—the letters or the copies?

Miss SHARTELL. The copies I had made.

Mr. VERTREES. For what purpose?

Miss SHARTELL. He told me to put my initials on all of them.

Mr. VERTREES. Did he say why?

Miss SHARTELL. He said to put my initials on them so that I would always know who had copied them; that anyone would always know who had copied them.

Mr. VERTREES. Did you do so?

Miss SHARTELL. Yes, sir.

Mr. VERTREES. I have, Mr. Chairman, those original letters, which have already been put in evidence and are copied in the record, and also one set of carbon copies. I have also a second set, which I have just obtained from Mr. Christensen, who was the successor of Mr. Glavis, and we will explain by him that both were found with the originals, but for the present I wish to present them to this witness.

The CHAIRMAN. All right.

Mr. GRAHAM. State where they are in the record now, Mr. Vertrees.

Mr. VERTREES. The letters appear at pages 839-847 of the record. The one set, the first set, were sent up by the Forestry Bureau in response to a demand of this committee.

Mr. BRANDEIS. Mr. Vertrees, will you have the kindness to let the stenographer mark them for the purposes of identification, the set that came from the Forestry Bureau, and then the other set, or the other way, the set that came direct from Mr. Christensen, and then the other set, just so that we may have them identified for other purposes?

Mr. VERTREES. Mr. Rasch informs me that what I have stated as one complete set, the one that came up from the Forestry Service, is not a complete set, so that it will not make it necessary to refer to them and identify them as you have stated; so with the permission of the committee, I will first state, before examining the witness, that the set already on file of carbon copies, or rather the portion of the set, are numbered, and the figures are in blue pencil. The first is a letter dated December 31, 1906, to the recorder of the United States land office at Juneau.

Mr. BRANDEIS. If you will pardon me, this you are now reading is numbered with blue pencil?

Mr. VERTREES. With blue pencil.

Mr. BRANDEIS. Is that the one which came from Mr. Christensen?

Mr. VERTREES. No; the Forestry Bureau.

Mr. OLMSTED. You say on file—you mean on file with this committee?

Mr. VERTREES. On file with this committee.

The CHAIRMAN. They came in response to a demand from the Forestry Service?

Mr. VERTREES. Those that came from the Forestry Bureau are as follows; and when I speak of numbering, it means that they are numbered with a blue pencil, as I understand.

(The letters referred to are as follows:)

December 23, 1908, R. A. Ballinger to register and receiver, United States land office, Juneau, Alaska.

December 17, 1908, Fred Dennett, commissioner, to Hon. R. A. Ballinger, Seattle, Wash.

September 26, 1907, Clarence Cunningham to register and receiver, United States land office, Juneau, Alaska.

December 11, 1907, Clarence Cunningham to Mr. P. M. Mullen, Juneau, Alaska.

Telegram, January 8, 1908, Clarence Cunningham to register and receiver, United States land office, Juneau, Alaska.

March 10, 1908, Clarence Cunningham to Mr. J. W. Dudley, Juneau, Alaska.

March 14, 1908, Clarence Cunningham to register and receiver, United States land office, Juneau, Alaska.

March 19, 1908, Clarence Cunningham to register and receiver, United States land office, Juneau, Alaska.

April 13, 1908, Clarence Cunningham to Mr. P. M. Mullen, Juneau, Alaska.

May 9, 1908, Clarence Cunningham to Mr. J. W. Dudley, Juneau, Alaska.

June 3, 1908, James D. Finch to register, United States land office, Juneau, Alaska.

April 19, 1909, Walter M. French to Hon. John W. Dudley, Juneau, Alaska.

January 7, 1909, M. A. Green to Hon. John W. Dudley, Juneau, Alaska.

April 23, 1909, M. A. Green to Hon. John W. Dudley, Juneau, Alaska.

March 12, 1908, H. Harriman to Hon. John W. Dudley, United States land office, Juneau, Alaska.

January 7, 1908, Arthur D. Jones to Mr. P. M. Mullen, receiver and S. D. A., United States land office, Juneau, Alaska.

January 11, 1908, Arthur D. Jones & Co., by H. Kissom, to Mr. P. M. Mullen, receiver, United States land office, Juneau, Alaska.

December 31, 1906, Wendell McLaughlin to recorder, United States land office, Juneau, Alaska.

August 3, 1907, Thomas Payne to Hon. J. W. Dudley, register, United States land office, Juneau, Alaska.

May 23, 1908, William Sulzer to register, General Land Office, Juneau, Alaska.

April 3, 1908, F. Watson to register and receiver, land office, Juneau, Alaska.

January 4, 1907, A. H. Wheatley to Hon. P. M. Mullen, receiver, G. L. O., Juneau, Alaska.

December 30, 1907, A. H. Wheatley to Hon. P. M. Mullen, receiver, G. L. O., Juneau, Alaska.

December 23, 1907, W. S. Yearsley, vice-president, to register, land office, Juneau, Alaska.

The CHAIRMAN. Are those a part of the 24 letters you refer to?

Mr. VERTREES. Yes.

The CHAIRMAN. Now, I think it would be a good thing to show there were some missing letters that are not with those copies. If we could get them in at the same time, in the same connection, it would be better.

Mr. VERTREES. Yes. Very well.

The CHAIRMAN. So that we get the whole group together.

Mr. VERTREES. Yes. I am going to offer both copies. It will be a duplication. But I have not a list of the missing ones; there are some.

Now, Miss Shartell, I here hand the papers to which I have just referred, and call your attention to the fact that in ink, written with a pen on the lower left-hand corner of them, appear the initials, or rather the letters "E. M. S." and ask you to examine them and say whether or not those are your initials and were made by you at the time you stated?

Mr. BRANDEIS. Are the papers the witness is now looking at from the Forestry Bureau?

Mr. VERTREES. Yes.

Miss SHARTELL (after examining the letters). Yes, sir.

Mr. VERTREES. Those are your initials?

Miss SHARTELL. Those are my initials.

Mr. VERTREES. Are those the copies, or part of the copies, you say you initialed, as already stated, by request of Mr. Glavis?

Miss SHARTELL. Yes.

Mr. VERTREES. Now, I here hand you another set of copies of those letters, and of all of them, which I have obtained, as I stated awhile ago, from Mr. Christensen, who brought them here, and ask you to examine them and see whether the letters "E. M. S.," which appear on every sheet of them, were made by you at the time stated?

Miss SHARTELL (after examination). Yes; those are my initials.

Mr. VERTREES. Made by you?

Miss SHARTELL. Yes; made by me.

Mr. VERTREES. At the time you stated?

Miss SHARTELL. Yes.

Mr. VERTREES. Were both sets made at the same time?

Miss SHARTELL. Yes.

Mr. BRANDEIS. Will you not hand those letters to the stenographer so that they may be initialed with some proper designation?

The CHAIRMAN. Do you offer those in evidence?

Mr. VERTREES. Yes.

Senator ROOT. The originals are already in evidence.

Mr. VERTREES. The originals are already in evidence.

Mr. GRAHAM. What is the purpose of duplicating them in the record?

Mr. VERTREES. I have no purpose of that kind, and would rather avoid it if I can. The fact I want to get before this committee is that these are the two copies, and that we found those copies with the originals in Mr. Glavis's box, and that these are the identical copies which this lady initialed at his request, as I have stated.

The CHAIRMAN. I think they are admissible for that purpose, if you offer them for that.

Mr. VERTREES. Yes.

Mr. MADISON. It would be unnecessary to require them to be put in again.

Senator ROOT. The stenographer can note that they are the copies of some letters that already appear in the record.

Mr. BRANDEIS. My purpose was that they might be marked for identification.

Mr. VERTREES. Do you remember how many copies you initialed at that time?

Miss SHARTELL. I initialed all the copies at that time that I had made.

Mr. VERTREES. I know you did, all that you had made, but do you recall how many you made? I believe you stated you could only say positively as many as two?

Miss SHARTELL. Yes.

Mr. VERTREES. But you do recognize these, that I have shown you, as the copies that you then initialed?

Miss SHARTELL. Yes.

Senator FLETCHER. Are they identical in all respects, Mr. Vertrees, those copies?

Mr. VERTREES. In what respect?

Senator FLETCHER. The same number of letters?

Mr. VERTREES. No, sir; some of them are missing, and I will have them—

Senator FLETCHER. I know—those two sets that you have.

The CHAIRMAN. Those two sets that you have, are they identical?

Mr. VERTREES. I presume so; they were given to me as such.

The CHAIRMAN. I thought you said the last set was a complete set?

Mr. VERTREES. I thought the Senator meant the same identical letters; not the same number of letters.

Senator SUTHERLAND. Does the one set include the other?

Mr. VERTREES. Yes; the one set includes the other; but there are some missing. The set that came up from the Forestry Bureau—

Mr. GRAHAM. Are all of them published in our record?

Mr. VERTREES. All 24 are published in the record.

Mr. GRAHAM. Beginning at page 839?

Mr. VERTREES. Eight thirty-nine.

Now, I offer to file those letters as part of the record, but as suggested, I do not at present see the necessity of copying them, inasmuch as all of the originals are in.

The CHAIRMAN. Why not let the stenographer refer to them by dates and names of the writers and the addresses; I think that is the best way.

Mr. VERTREES. Then, without detaining the committee by reading the names and addresses, I will say the others are here, and he can insert the list.

Mr. OLMSTED. Let me understand before you go further. How many sets have you now produced with her initials?

Mr. VERTREES. Two. That is, one complete set and one broken et.

Mr. OLMSTED. One from the Forestry Department, and the other from Mr. Christensen?

Mr. VERTREES. Yes.

Mr. OLMSTED. Not two sets from Mr. Christensen?

Mr. VERTREES. No, sir; not two sets from Mr. Christensen.

The CHAIRMAN. This complete set, Mr. Vertrees, we understand is what you claim was found with the originals by Mr. Christensen. Do I understand that correctly?

Mr. VERTREES. Yes.

(The set found with the originals is as follows):

December 23, 1908, R. A. Ballinger to register and receiver, United States land office, Juneau, Alaska.

December 17, 1908, Fred Dennett, commissioner, to Hon. R. A. Ballinger, Seattle, Wash.

September 26, 1907, Clarence Cunningham to register and receiver, United States land office, Juneau, Alaska.

Telegram, January 8, 1908, Clarence Cunningham to register and receiver, United States land office, Juneau.

March 10, 1908, Clarence Cunningham to Mr. J. W. Dudley, Juneau, Alaska.

March 14, 1908, Clarence Cunningham to register and receiver, United States land office, Juneau, Alaska.

December 11, 1907, Clarence Cunningham to Mr. P. M. Mullen, Juneau, Alaska.

March 19, 1908, Clarence Cunningham to register and receiver, United States land office, Juneau, Alaska.

April 13, 1908, Clarence Cunningham to Mr. P. M. Mullen, Juneau, Alaska.

May 9, 1908, Clarence Cunningham, St. Paul Apartments, Seattle, to Mr. J. W. Dudley, Juneau, Alaska.

June 3, 1908, James D. Finch to register United States land office, Juneau, Alaska.

April 19, 1909, Walter M. French to Hon. John W. Dudley, Juneau, Alaska.

January 7, 1909, M. A. Green, to Hon. John W. Dudley, Juneau, Alaska.

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May 23, 1908, William Sulzer to register general land office, Juneau, Alaska (Mr. Mullen).

April 3, 1908, F. Watson to register and receiver, land office, Juneau, Alaska.

January 4, 1907, A. H. Wheatley to Hon. P. M. Mullen, receiver G. L. O., Juneau, Alaska.

December 23, 1907, W. S. Yearsley, president, to register land office, Juneau, Alaska.

December 30, 1907, A. H. Wheatley to Mr. P. M. Mullen, receiver G. L. O., Juneau, Alaska.

January 15, 1908, Clarence Cunningham to register and receiver United States land office, Juneau, Alaska.

December 31, 1906, Wendell McLaughlin to recorder United States land office, Juneau, Alaska.

January 4, 1907, A. H. Wheatley to Hon. P. M. Mullen, receiver G. L. O., Juneau, Alaska.

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January 7, 1908, Arthur D. Jones to Mr. P. M. Mullen, receiver and S. D. A., United States land office, Juneau, Alaska.

Telegram January 8, 1908, Clarence Cunningham to register and receiver, United States land office, Juneau.

January 11, 1908, Arthur D. Jones & Co., by Kissom, to Mr. P. M. Mullen, receiver United States land office, Juneau, Alaska.

March 10, 1908, Clarence Cunningham to Mr. J. W. Dudley, Juneau, Alaska.

March 12, 1908, H. Harriman to Hon. John W. Dudley, United States land office, Juneau, Alaska.

March 19, 1908, Clarence Cunningham to register and receiver United States land office, Juneau, Alaska.

April 13, 1908, Clarence Cunningham to Mr. P. M. Mullen, Juneau, Alaska.

May 9, 1908, Clarence Cunningham to Mr. J. W. Dudley, Juneau, Alaska.

June 3, 1908, James D. Finch to register United States land office, Juneau, Alaska.

Mr. VERTREES. Now, I want to show still a third set that has just been brought to my attention which I did not have in mind when I was speaking, and they are attached to the originals which are already on file, so that the committee may understand it, that the broken or partial set now here came up from the Forestry Service, and now I have presented one full set which was delivered by Mr. Christensen. Now, I am going to offer another complete set that are already on file, filed with the original papers some time since with the committee which also came from Mr. Christensen, and we will explain by him how he got them. So that the committee will understand that I have these two complete sets; two are presented by Mr. Christensen while another incomplete set comes from the Forestry Service.

(The third set referred to is as follows:)

January 15, 1908, Clarence Cunningham to register and receiver, United States land office, Juneau, Alaska.

May 9, 1908, Clarence Cunningham to Mr. J. W. Dudley, Juneau, Alaska.

March 10, 1908, Clarence Cunningham to Mr. J. W. Dudley, Juneau, Alaska.

March 19, 1908, Clarence Cunningham to register and receiver, United States land office, Juneau, Alaska.

April 13, 1908, Clarence Cunningham to Mr. P. M. Mullen, Juneau, Alaska.

March 14, 1908, Clarence Cunningham to register and receiver, United States land office, Juneau, Alaska.

May 23, 1908, Wm. Sulzer to register, general land office, Juneau, Alaska.

January 4, 1907, A. H. Wheatley to Hon. P. M. Mullen, receiver, G. L. O., Juneau, Alaska.

December 30, 1907, A. H. Wheatley to Hon. P. M. Mullen, receiver, G. L. O., Juneau, Alaska.

April 3, 1908, E. M. S. to register and receiver, land office, Juneau, Alaska.

March 12, 1908, H. Harriman to Hon. John W. Dudley, United States land office, Juneau, Alaska.

January 7, 1908, Arthur D. Jones to Mr. P. M. Mullen, receiver and S. D. A., United States land office, Juneau, Alaska.

January 11, 1908, Arthur D. Jones & Co., by Kissom, to Mr. P. M. Mullen, receiver United States land office, Juneau, Alaska.

Telegram, January 8, 1908, Clarence Cunningham to register and receiver, United States land office, Juneau.

June 3, 1908, James D. Finch to register, United States land office, Juneau, Alaska.

December 11, 1907, Clarence Cunningham to Mr. P. M. Mullen, Juneau, Alaska.

December 23, 1907, W— S. Yearsley, vice-president, to register, land office, Juneau, Alaska.

September 26, 1907, Clarence Cunningham to register and receiver, United States land office, Juneau, Alaska.

August 3, 1907, Thos. Payne to Hon. J. W. Dudley, register, United States land office, Juneau, Alaska.

December 31, 1906, Wendell McLaughlin to recorder, United States land office, Juneau, Alaska.

January 7, 1909, M. A. Green to Hon. John W. Dudley, Juneau, Alaska.

April 23, 1909, M. A. Green to Hon. John W. Dudley, Juneau, Alaska.

April 19, 1909, Walter M. French to Hon. John W. Dudley, Juneau, Alaska.

December 23, 1908, R. A. Ballinger to register and receiver, United States land office, Juneau, Alaska.

December 17, 1908, Fred Dennett, commissioner, to Hon. R. A. Ballinger, Seattle, Wash.

Senator FLETCHER. You mean now that you have in hand the originals and the copy?

Mr. VERTREES. Yes, sir.

Now, to refresh your recollection, Miss Shartell—

Mr. BRANDEIS. Would it not be well, Mr. Vertrees, to take the time now to have the stenographer identify those sets by some proper designation. I am afraid there will be some confusion later if we do not, as the sets are not very securely bound together.

Mr. VERTREES. I now bring to your attention—

Senator SUTHERLAND. Suppose they be put into the hands of the clerk of the committee; he will take care of them.

Mr. BRANDEIS. They will be used, I think, by counsel, Senator.

Mr. VERTREES. I now bring to your attention, Miss Shartell, another copy of these letters, which I will state are here on file with the original letters, and ask you to examine them and say whether that copy is initialed, and, if so, whether these initials are yours and made by you at that time?

Miss SHARTELL (after examination). Yes; those are the initialed, the same as the others.

Mr. VERTREES. Are those the other two?

Miss SHARTELL. Yes, sir.

Mr. VERTREES. Those are yours, are they?

Miss SHARTELL. Yes.

Mr. VERTREES. So that would make three, then, would it not, that you must have initialed at that time?

Miss SHARTELL. Yes, sir.

Mr. VERTREES. And would also make it appear that there were at least three sets that you had written?

Miss SHARTELL. Yes, sir.

Mr. VERTREES. Which would make one original and two carbons?

Miss SHARTELL. Yes, sir.

Mr. VERTREES. And what did you do with them after you had initialed them?

Miss SHARTELL. I returned them to Mr. Glavis.

Mr. VERTREES. And then what became of them?

Miss SHARTELL. I never saw them after that.

Mr. VERTREES. Were they returned to the office prior to February, 1910?

Miss SHARTELL. Not that I ever saw.

Mr. VERTREES. Did you have charge of the office and were familiar with those records?

Miss SHARTELL. Yes, sir; I had charge of the office.

Mr. VERTREES. Did you ever initial any other papers or letters or copies for Mr. Glavis?

Miss SHARTELL. No; I never initialed any other.

Mr. VERTREES. Did he ever request you to initial any other than this set of 24?

Miss SHARTELL. No, sir.

Mr. VERTREES. Well, Mr. Glavis was absent at the time you have stated. Did you receive any letters from him?

Miss SHARTELL. Yes, sir; I received two that I know of.

Mr. VERTREES. Two. I here hand you a letter dated Boston, Mass., August 19, 1909, addressed to "Dear Miss Shartell" and signed "L. R. Glavis," and ask you if that is one of the two you received.

Miss SHARTELL. Yes, sir; this is the second one I received.

Mr. VERTREES. Did you receive any more than those two?

Miss SHARTELL. No; I did not. I did not receive any others.

Mr. VERTREES. I will read this letter to the committee.

The CHAIRMAN. You offer that in evidence?

Mr. VERTREES. Yes, sir; I wish that letter to go in.

The CHAIRMAN. It is admitted.

Mr. VERTREES (reading):

THE HOTEL ESSEX,
Boston, Mass., August 19, 1909.

DEAR MISS SHARTELL: Please place this on file and destroy the other one.

I will be here until Monday. I hope to reach Seattle before the end of the month, but can not state positively until next week. I will wire you when I know definitely.

Spaulding will know how long we have authority to employ Miss Schwinnen; you may ask the G. L. O. by wire for an extension of this authority if you think her services are necessary. It seems to me, however, that for the time being you can handle the work alone.

Should Guy and Foreman fail to forward their affidavits to be copied, call on them to do so.

I believe we have sent in some of the agents' summary of their daily reports for the month without my indorsement on the back. You will notice what I mean by looking on the last blank on the daily report books. Hold them hereafter for my signature.

All the records in the office are in your charge, and you will kindly not permit anyone to handle or take them, especially the coal records. Should anyone higher in authority make request therefor, you will not turn them over until receipts are secured specifically setting forth each and every paper delivered. Tell Spaulding that his stenographer's notebook is an official record and that he must not allow it to leave his possession under any circumstances; that if he so desires he may state I have it.

Respectfully,

L. R. GLAVIS.

Mr. VERTREES. In point of fact, at that time, is it not true that Mr. Glavis did not have it, but that Mr. Spaulding did?

Miss SHARTELL. He never carried any notebooks around with him.

Mr. VERTREES. You mean that Mr. Glavis did not?

Miss SHARTELL. Mr. Glavis did not.

Mr. VERTREES. Did you communicate that instruction to Mr. Spaulding?

Miss SHARTELL. I told Mr. Spaulding about that.

Mr. VERTREES. There is an affidavit we know as the McKenzie affidavit, made by Mr. Jones and Mr. Glavis; did you write that out?

Miss SHARTELL. Yes, sir.

Mr. VERTREES. Who dictated that, if you remember?

Miss SHARTELL. Mr. Glavis dictated it; Mr. Jones was suggesting things as he went along.

Mr. VERTREES. When was that, Miss Shartell?

Miss SHARTELL. That was September 8, 1909.

Mr. VERTREES. Were you present on the 20th of September when Mr. Glavis came in and brought some papers?

Miss SHARTELL. Yes, sir.

Mr. VERTREES. Did you hear any conversation, or any part of a conversation then, between him and Mr. Christensen with reference to the papers in the office?

Miss SHARTELL. He was there for quite a little while. All I heard was when Mr. Glavis was coming from the room, he passed my desk, and Mr. Christensen asked him if he had then all the records that belonged to the office, and Mr. Glavis said that he had—that Mr. Christensen had the records.

Mr. VERTREES. Now, in February, 1910, was there any search made through the office for any papers, that you remember, after his committee met; do you recall that any search was made?

Miss SHARTELL. Yes, sir.

Mr. VERTREES. Did you make any search?

Miss SHARTELL. I made a search for several things, for several papers.

Mr. VERTREES. Do you remember what papers you did search for?

Miss SHARTELL. Well, every day there would be something sent over. I would search for them, and if I found them I would send them.

Mr. VERTREES. Do you remember whether you did or did not make any special search for those 24 letters?

Miss SHARTELL. I made search for them, not at that time, but I had made search for them in October and November, I believe it was; I had thoroughly searched the office for them.

Mr. VERTREES. By the direction of Mr. Christensen?

Miss SHARTELL. No; by direction of Mr. Sheridan.

Mr. VERTREES. So you had made a search back in October and November?

Miss SHARTELL. I had made a thorough search for them then. And knew it was not necessary to go through the office again.

Mr. VERTREES. Do you know whether or not Mr. Christensen, back at that time, after he had taken charge, took affidavits or statements from all the persons in the office as to whether they had any knowledge of the whereabouts of those 24 papers?

Miss SHARTELL. Mr. Sheridan did that, I believe.

Mr. VERTREES. Did you make a statement?

Miss SHARTELL. Yes, sir.

Mr. VERTREES. Did you give it to Mr. Sheridan or Mr. Christensen?

Miss SHARTELL. I gave it to Mr. Sheridan.

Mr. VERTREES. The result of that search, as I understand you, was nothing; you found nothing?

Miss SHARTELL. I found nothing.

Mr. VERTREES. When did you next see those papers, the copies you have identified here as having been initialed by you?

Miss SHARTELL. I next saw them February 8, 1910, when Mr. Christensen brought them down from the upstairs room.

Mr. VERTREES. You saw them then?

Miss SHARTELL. Yes, sir.

Mr. VERTREES. You identify them as being these same papers?

Miss SHARTELL. Yes, sir.

Mr. VERTREES. You had not seen them in the meantime?

Miss SHARTELL. I had not seen them in the meantime.

Mr. VERTREES. As I understand you, these are the only letters that Mr. Glavis ever requested you to initial the copies of?

Miss SHARTELL. Yes, sir.

Mr. VERTREES. You may examine Miss Shartell, Mr Brandeis.

Mr. BRANDEIS. Where is that affidavit that Miss Shartell made? You will recall I requested you to produce all of them?

Mr. VERTREES. I know you did.

Mr. BRANDEIS. It has not been produced.

Mr. VERTREES. No, sir; it has not. It is merely a statement instead of an affidavit. Mr. Christensen, you have that, I think. I said in response to your request that we would produce these affidavits with Mr. Christensen.

Mr. BRANDEIS. I do not think that was coupled in that way.

Mr. VERTREES. I think you will find it in the record of yesterday.

Mr. BRANDEIS. The one of Miss Shartell that I am particularly anxious for at the moment.

Mr. VERTREES. It seems to me that there is more than one here. Examine them and see if they are the statements you refer to, Miss Shartell.

You will find on page 2522 of the record my statement as to that.

As to the affidavits referred to in the letter of March 30, 1910, I would add that they are in the possession of Mr. Christensen, who has been summoned as a witness who will be examined at an early date, and at that time these affidavits, as well as other papers relating to the matter to which Mr. Christensen will depose, can then be seen.

Mr. BRANDEIS. If the committee will pardon me, I would like to look over these affidavits before I examine the witness.

Mr. VERTREES. There is one question I will ask Miss Shartell which I forgot. Was that McKenzie affidavit, or any copy of it ever filed in the office?

Miss SHARTELL. No; not that I know of. I did the filing in the office. I never filed any copy of that McKenzie affidavit.

The CHAIRMAN. Will you speak a little louder please?

Mr. VERTREES. Either the original or the copies?

Miss SHARTELL. Either the originals or the copies.

Mr. VERTREES. In other words, you never saw it any more after that?

Miss SHARTELL. I never saw that McKenzie affidavit after I had copied it, after I had written it out.

Mr. VERTREES. By that you mean the joint affidavit made on that date?

Miss SHARTELL. The joint affidavit made by Mr. Jones and Mr. Glavis about the McKenzie affidavit.

Mr. BRANDEIS. You have stated that there were 24 of these letters of which you made these carbon copies and initialed them?

Miss SHARTELL. Yes, sir.

Mr. BRANDEIS. How do you happen to remember that there were just 24?

Miss SHARTELL. Well, I remembered at the time I made them.

Mr. BRANDEIS. Now, you did recall that there were 24 then?

Miss SHARTELL. Yes, sir.

Mr. BRANDEIS. And, as I recall, you made them one day sometime before you heard of Mr. Glavis's removal?

Miss SHARTELL. Yes, sir.

Mr. BRANDEIS. And laid them on his desk?

Miss SHARTELL. Yes, sir.

Mr. BRANDEIS. With the copies?

Miss SHARTELL. Yes, sir; with the copies.

Mr. BRANDEIS. And the next day he brought them back to you and asked you to initial them so that there could not be any question as to who had made the copies?

Miss SHARTELL. Yes, sir.

Mr. BRANDEIS. And then probably during that same day you returned them to him?

Miss SHARTELL. Immediately after I had initialed them.

Mr. BRANDEIS. That is what I mean; the same day, or the second day.

Miss SHARTELL. Yes, sir.

Mr. BRANDEIS. Where was he when you returned them to him?

Miss SHARTELL. He was at his desk in his office.

Mr. BRANDEIS. Then, when Mr. Vertrees said that after that time—at least as I understood him to say—there was no one in the office; you don't know whether they remained in the office or not, so far as that question was concerned? He was in the office when you handed them to him?

Miss SHARTELL. Yes, sir.

Mr. BRANDEIS. At his desk?

Miss SHARTELL. At his desk.

Mr. BRANDEIS. They were laid on his desk, do you remember?

Miss SHARTELL. Yes, sir.

Mr. BRANDEIS. Much the same way as you had laid the originals there, I suppose?

Miss SHARTELL. Yes, sir.

Mr. BRANDEIS. Was there anything else on the desk?

Miss SHARTELL. Yes, sir.

Mr. BRANDEIS. What?

Miss SHARTELL. Well, there was always papers around on the desk and in baskets; there were books, and different things.

Mr. BRANDEIS. Now, as near as you can recollect, tell us what kind of desk it was, what the papers were, and what the books were; just try to give us a picture of what there was there.

Miss SHARTELL. Well, it was a flat-top desk, just a table desk; there would be—he always had one or two filing baskets on the desk; then there would also be papers lying around like an ordinary office desk.

Mr. BRANDEIS. And what else was there—in the first place how large is this desk?

Miss SHARTELL. Larger than this one [referring to counsel table].

Mr. BRANDEIS. That is larger than this table that you see there?

Miss SHARTELL. Yes, sir.

Mr. BRANDEIS. Much larger than the table?

Miss SHARTELL. Well, I believe it would be wider.

Mr. BRANDEIS. What else was there besides the papers and the filing baskets?

Miss SHARTELL. I can not remember at this time. There were always a number of things on his desk.

Mr. BRANDEIS. I mean what things; what class of things.

Miss SHARTELL. Oh, the work; the different files of the office that would be taken up during the day, and the mail that had come in.

Mr. BRANDEIS. And you spoke of books?

Miss SHARTELL. Well, there would be probably a few law books in the office.

Mr. BRANDEIS. There were some law books?

Miss SHARTELL. I can not remember whether there was any law books on there or not, but there probably was some books on there. I can not remember what the desk did look like, hardly.

Mr. BRANDEIS. Well, besides that desk were there any chairs or tables or other cases of any kind around in which there were papers or books, or other things?

Miss SHARTELL. There were bookcases in that office and another large table.

Mr. BRANDEIS. And where is your desk with reference to the desk that Mr. Glavis occupied?

Miss SHARTELL. Why, it is just past the filing case in the other room. The filing cases is the only partition that divides his office from where I was.

Mr. BRANDEIS. It is one large office, and these filing cases are arranged so as to practically divide the office?

Miss SHARTELL. Yes, sir.

Mr. BRANDEIS. Are there any desks there for persons other than yourself—

Miss SHARTELL. In the large room?

Mr. BRANDEIS. Well, in either room?

Miss SHARTELL. Yes, sir; in the room where I am there are several other desks, and always have been.

Mr. BRANDEIS. And in the particular room that Mr. Glavis occupied?

Miss SHARTELL. As I said, there is a large table and a bookcase, and an old roll-top desk in that office.

Mr. BRANDEIS. Well, in these filing cases how many different files of papers are there?

Miss SHARTELL. There is four tiers, I think, and four in each tier.

Mr. BRANDEIS. I mean how many different cases are there, I mean the files of papers. Are the papers numbered in the files?

Miss SHARTELL. Oh, yes; they are numbered.

Mr. BRANDEIS. Well, have you any recollection or impression as to the numbers, whether they run into the thousands or not?

Miss SHARTELL. Yes, sir.

Mr. BRANDEIS. They do?

Miss SHARTELL. Yes, sir; they would run—yes, sir; they would run into the thousands.

Mr. BRANDEIS. There are papers there also, not only live matters, but there are also a large number of papers which are considered as closed, I suppose?

Miss SHARTELL. Yes, sir.

Mr. BRANDEIS. And in the filing of these papers it would be the duty of whoever in the office was charged with the filing to file away the papers, as they came in from time to time, into these thousands of files?

Miss SHARTELL. Yes, sir.

Mr. BRANDEIS. Now, you spoke of a roll-top desk in that office. Who occupied that desk?

Miss SHARTELL. No one did; it was an old desk. I do not think that it had anything in it.

Mr. BRANDEIS. Mr. Sheridan was about there considerably at that time, was he not? Or was that a little later?

Miss SHARTELL. He came later.

Mr. BRANDEIS. When did he come?

Miss SHARTELL. I don't know exactly the date, but it was after Mr. Glavis had left the service.

Mr. BRANDEIS. What desk did Mr. Christensen occupy when he came there?

Miss SHARTELL. He occupied the desk Mr. Glavis had had.

Mr. BRANDEIS. And what did Mr. Sheridan occupy when he came there?

Miss SHARTELL. He occupied the same desk. Mr. Christensen was only there a couple of days in the week, and Mr. Sheridan occupied that desk when Mr. Christensen wasn't there.

Mr. BRANDEIS. Were there any drawers in this desk?

Miss SHARTELL. Yes, sir.

Mr. BRANDEIS. How many?

Miss SHARTELL. There are seven or eight—I don't know.

Mr. BRANDEIS. And do you know what was in those drawers?

Miss SHARTELL. No, sir.

Mr. BRANDEIS. You did not examine those drawers?

Miss SHARTELL. No, sir.

Mr. BRANDEIS. Well, when you spoke of having made a search for papers in October, if I remember right, just what did you do? To what extent did you go through those thousands of different files of papers?

Miss SHARTELL. I went through every one thoroughly.

Mr. BRANDEIS. But you did not go through the desk?

Miss SHARTELL. I did not go through the desk. I was just supposed to go through the files.

Mr. BRANDEIS. And did you at any time make any search among Mr. Sheridan's papers?

Miss SHARTELL. No; he always had charge of those, and had them locked up when he was not there.

Mr. BRANDEIS. And did you ever make any search through Mr. Christensen's papers?

Miss SHARTELL. No, sir.

Mr. BRANDEIS. You never did that?

Miss SHARTELL. No, sir.

Mr. BRANDEIS. That is all, Miss Shartell.

Mr. VERTREES. One word, please; it is a matter I should have asked originally.

The CHAIRMAN. Go on.

Mr. VERTREES. How did these papers—do you know how these papers came down to the office at Seattle, or where they came from, or whether they had been there all the time?

Miss SHARTELL. No; at the time I did not know where they had come from.

Mr. VERTREES. You did learn subsequently, did you not, that they had been brought by Mr. Bowman from Juneau?

Miss SHARTELL. Yes, sir; I learned in November that there had been some papers brought down by Mr. Bowman, but I did not know what papers they were.

Mr. VERTREES. You did not know until November?

Miss SHARTELL. No; I did not know until November.

MR. BRANDEIS. You said, Miss Shartell, the first time you remembered seeing these papers, after you gave them back to Mr. Glavis, after initialing them, was when Mr. Christensen brought them in?

MISS SHARTELL. Yes, sir.

MR. BRANDEIS. What did Mr. Christensen say when he brought in those papers?

MISS SHARTELL. Well, we had been searching the day before, and several days previous to this, we had been searching for other records that were sent for, and Mr. Parks had gone up to that room the day before, and when Mr. Christensen came down with the papers he said, "I guess you did not look very good," or something to that effect.

MR. BRANDEIS. Mr. Christensen said that to Mr. Parks?

MISS SHARTELL. Yes, sir.

MR. BRANDEIS. Mr. Parks is a special agent?

MISS SHARTELL. Yes, sir.

MR. BRANDEIS. And that day when Mr. Christensen made the remark to Mr. Parks that you did not look very good, was the 8th day?

MISS SHARTELL. The 8th day of February.

MR. BRANDEIS. Then it was the 7th day of February that Mr. Parks had been up there?

MISS SHARTELL. No, it was not. Come to think of it, it was a few days previous to that that he had been there.

MR. BRANDEIS. He had been there a few days previous to the 8th?

MISS SHARTELL. He had been there about a week before.

MR. BRANDEIS. Well, what did you, yourself, know about Mr. Christensen having been up in that room?

MISS SHARTELL. I do not know; he was up in that room until he came down with the papers and said he had found them.

MR. BRANDEIS. You spoke of his coming down. That is, he came down into the office?

MISS SHARTELL. He came into the office.

MR. BRANDEIS. And said that he had found them?

MISS SHARTELL. Yes, sir.

MR. BRANDEIS. And said that in Mr. Parks's presence, or did Mr. Parks come in with him?

MISS SHARTELL. No, sir; he said that in Mr. Parks's presence. Mr. Parks was there.

MR. BRANDEIS. He was in the office with you at the time?

MISS SHARTELL. Yes, sir.

MR. BRANDEIS. Has Mr. Parks a desk with you in the same part of the office?

MISS SHARTELL. Yes, sir.

MR. BRANDEIS. Where was the key kept in this room?

MISS SHARTELL. In which room?

MR. BRANDEIS. The room in which these papers Mr. Christensen said that he had found.

MISS SHARTELL. Mr. O'Neill keeps the key.

MR. BRANDEIS. What room is it?

MISS SHARTELL. I do not know.

MR. BRANDEIS. Have you ever been up there?

MISS SHARTELL. No.

MR. BRANDEIS. You have only heard Mr. Christensen speak of it?

MISS SHARTELL. Yes.

it be a few days or a week, when he came in after searching for the papers?

Miss SHARTELL. That is all he said. That was just before noon—that was just before noon when he came in and said, "Send that telegram," and after noon it was not brought up again.

Mr. BRANDEIS. Miss Shartell, did he tell you where he had obtained the key?

Miss SHARTELL. All he told me was to telegraph to Christensen that he and O'Neill had looked into the boxes. I do not know the exact words he used, and I supposed he got the key from Mr. O'Neill, as he is the one that has charge of the key.

Mr. BRANDEIS. Well, was there not a time when the key, or a key, was left in your charge?

Miss SHARTELL. No, sir; not to that room.

Mr. BRANDEIS. Not that room?

Miss SHARTELL. Not to any room except the office.

Mr. BRANDEIS. You had the key to the office?

Miss SHARTELL. Yes, sir.

Mr. BRANDEIS. And on what floor is the office?

Miss SHARTELL. The second floor.

Mr. BRANDEIS. And this room which you have never seen is on what floor, as you understand it?

Miss SHARTELL. As I understand it, it is on the third floor.

Mr. BRANDEIS. The third or fourth?

Miss SHARTELL. I do not remember; I do not know exactly.

Mr. BRANDEIS. Do you remember how many floors there are?

Miss SHARTELL. There are four floors in the building.

Mr. BRANDEIS. In the building?

Miss SHARTELL. Yes.

Mr. BRANDEIS. And you have never been above this second floor, in which that office is?

Miss SHARTELL. I have been above, but not to that room.

Mr. BRANDEIS. What are the rooms above that you know of?

Miss SHARTELL. The only room I know of is the United States attorney's room on the third floor.

Mr. BRANDEIS. Do you know of anyone else having been up in the room where these boxes are, other than Mr. Parks?

Miss SHARTELL. No; I do not know of anyone else.

Mr. BRANDEIS. And Mr. Christensen and Mr. O'Neill.

Miss SHARTELL. I do not know of anyone else having been up there.

Mr. BRANDEIS. Have you heard of anyone having been up there other than that since the time that these papers were being searched for, during that period, or any search?

Miss SHARTELL. No; I never heard of anyone being up there.

Mr. BRANDEIS. Except Mr. Parks; he went up with Mr. O'Neill, as you understand, did he?

Miss SHARTELL. Yes.

Mr. BRANDEIS. And then Mr. Christensen having gone up there subsequently?

Miss SHARTELL. Yes.

Mr. BRANDEIS. And so far as you know, Mr. Parks was there but once?

Miss SHARTELL. Yes.

Mr. JAMES. Where is Mr. Parks?

Mr. JAMES. He said that he had searched the boxes and could find nothing, and for you to wire that?

Miss SHARTELL. Yes.

Mr. MADISON. It was about a week afterwards, you say, when Mr. Christensen went up to this same room?

Miss SHARTELL. Yes.

Mr. MADISON. Did you know when Mr. Christensen went to that room?

Miss SHARTELL. No.

Mr. MADISON. You did not know he had gone?

Miss SHARTELL. I did not know that he had gone to that room.

Mr. MADISON. Then when he came down he said to Parks, "You surely did not search very closely," or something to that effect?

Miss SHARTELL. Something to that effect.

Mr. MADISON. Did Parks seem much surprised at that?

Miss SHARTELL. I can not remember exactly. I was working at the time and did not pay much attention; I can not remember whether he said anything or not.

Mr. MADISON. You said a moment ago that he seemed somewhat surprised.

Miss SHARTELL. He might have expressed some surprise that they were found there. I do not know what his reasons were.

Mr. MADISON. Your impression at this time is that he was surprised that Christensen had found them. I am just asking for the facts. Tell what the facts are as you remember them.

Miss SHARTELL. That is my impression at this time.

Mr. MADISON. That is all.

Mr. BRANDEIS. Miss Shartell, can you tell us anything more—by the way, Mr. Vertrees, where is that telegram?

Mr. VERTREES. Mr. Christensen tells me he does not have it here, but a copy can be gotten down town.

Mr. BRANDEIS. Does Mr. Christensen mean that the letter is not in the city of Washington?

Mr. VERTREES. I made no such statement as that.

Mr. BRANDEIS. What did you mean by saying that you have not got it here, but that a copy can be obtained?

Mr. VERTREES. I will tell you what I mean. I said it was not here, but a copy can be found in town.

Mr. BRANDEIS. You said something about a copy being found, if my memory serves me aright.

Mr. VERTREES. That is what I said.

Senator SUTHERLAND. Let us go on with the witness.

Mr. BRANDEIS. I want that telegram here.

Senator ROOT. You can not have it if it is not here.

Mr. BRANDEIS. It can be gotten here if they telephone for it. I request that they do telephone down town and get that telegram.

Mr. VERTREES. Mr. Christensen thinks he can produce it; it is down town.

Senator FLETCHER. Miss Shartell, did you keep a copy of that telegram in the office there?

Miss SHARTELL. Yes.

Mr. BRANDEIS. I was about to ask you, Miss Shartell, what, as near as you can remember, Mr. Parks said to you those few days, whether

it be a few days or a week, when he came in after searching for the papers?

Miss SHARTELL. That is all he said. That was just before noon—that was just before noon when he came in and said, "Send that telegram," and after noon it was not brought up again.

Mr. BRANDEIS. Miss Shartell, did he tell you where he had obtained the key?

Miss SHARTELL. All he told me was to telegraph to Christensen that he and O'Neill had looked into the boxes. I do not know the exact words he used, and I supposed he got the key from Mr. O'Neill, as he is the one that has charge of the key.

Mr. BRANDEIS. Well, was there not a time when the key, or a key, was left in your charge?

Miss SHARTELL. No, sir; not to that room.

Mr. BRANDEIS. Not that room?

Miss SHARTELL. Not to any room except the office.

Mr. BRANDEIS. You had the key to the office?

Miss SHARTELL. Yes, sir.

Mr. BRANDEIS. And on what floor is the office?

Miss SHARTELL. The second floor.

Mr. BRANDEIS. And this room which you have never seen is on what floor, as you understand it?

Miss SHARTELL. As I understand it, it is on the third floor.

Mr. BRANDEIS. The third or fourth?

Miss SHARTELL. I do not remember; I do not know exactly.

Mr. BRANDEIS. Do you remember how many floors there are?

Miss SHARTELL. There are four floors in the building.

Mr. BRANDEIS. In the building?

Miss SHARTELL. Yes.

Mr. BRANDEIS. And you have never been above this second floor, in which that office is?

Miss SHARTELL. I have been above, but not to that room.

Mr. BRANDEIS. What are the rooms above that you know of?

Miss SHARTELL. The only room I know of is the United States attorney's room on the third floor.

Mr. BRANDEIS. Do you know of anyone else having been up in the room where these boxes are, other than Mr. Parks?

Miss SHARTELL. No; I do not know of anyone else.

Mr. BRANDEIS. And Mr. Christensen and Mr. O'Neill.

Miss SHARTELL. I do not know of anyone else having been up there.

Mr. BRANDEIS. Have you heard of anyone having been up there other than that since the time that these papers were being searched for, during that period, or any search?

Miss SHARTELL. No; I never heard of anyone being up there.

Mr. BRANDEIS. Except Mr. Parks; he went up with Mr. O'Neill, as you understand, did he?

Miss SHARTELL. Yes.

Mr. BRANDEIS. And then Mr. Christensen having gone up there subsequently?

Miss SHARTELL. Yes.

Mr. BRANDEIS. And so far as you know, Mr. Parks was there but once?

Miss SHARTELL. Yes.

Mr. JAMES. Where is Mr. Parks?

Miss SHARTELL. He is here.

The CHAIRMAN. Is that all you desire to ask of this witness?

Mr. BRANDEIS. I am waiting for the telegram. I would like Miss Shartell to remain until I have the telegram.

The CHAIRMAN. You can call another witness, and then we can bring her back when the telegram comes.

Mr. VERTREES. I would like to ask one question.

The CHAIRMAN. Very well.

Mr. VERTREES. Miss Shartell, what was Mr. Parks searching for, these 24 letters or something else?

Miss SHARTELL. Mr. Parks was searching for notebooks which had been sent by Special Agent Bowman.

Mr. VERTREES. What was Mr. Christensen looking for at the time he found these letters and copies?

Miss SHARTELL. He was looking for some telegrams and a letter sent for by the committee, other than any of these letters.

Mr. VERTREES. When you said "had been sent for," I understand you mean to be understood as saying sent for by this committee.

Miss SHARTELL. Sent for by this committee, yes, sir.

Mr. VERTREES. Telegram after telegram had come there from the department to get certain papers?

Miss SHARTELL. Yes, sir.

Mr. VERTREES. They were not looking for these papers either time?

Miss SHARTELL. No.

Mr. BRANDEIS. You speak of notebooks of Mr. Bowman?

Miss SHARTELL. Yes.

Mr. BRANDEIS. What books were those?

Miss SHARTELL. That morning Mr. Christensen had telephoned from Portland for some notebooks of Mr. Bowman prior to July 1, and they were not in the files of the office, and we were looking for them among the newspapers and things that were stored around in there.

The CHAIRMAN. Let me ask a question, Mr. Brandeis. Miss Shartell, were those stenographic notebooks you refer to?

Miss SHARTELL. No; they were field notebooks.

The CHAIRMAN. Field notebooks?

Miss SHARTELL. Yes, sir.

Mr. BRANDEIS. What were the papers that you said Mr. Christensen was looking for on the 8th day of February?

Miss SHARTELL. They were two telegrams and a letter that the committee had sent for the previous day.

Mr. BRANDEIS. Do you recall what telegrams and letter they were?

Miss SHARTELL. Yes; they were the telegrams of April 11 and 13 and letter of June 8. The letter and telegrams were between Mr. Glavis and the commissioner.

Mr. BRANDEIS. The telegrams are the 11th and 13th of April, 1908, and the letter of June 3, was it not; not June 8?

Miss SHARTELL. Some date in June.

Mr. BRANDEIS. A letter from the commissioner to Mr. Glavis of June 3, was it not?

Miss SHARTELL. Yes; I guess so.

Mr. BRANDEIS. We would like, Mr. Vertrees, to have also copies, or the originals if you have them, of all the telegrams which were sent to Mr. Christensen, and letters requesting papers.

Mr. VERTREES. I will just state in this connection that Mr. Christensen is here with a great many papers. I suppose he has all, and we will introduce him very shortly, as soon as we can get to him, but if there are any that are not here we will obtain them. Mr. Christensen is the chief, and knows more about it than anyone else.

Mr. GRAHAM. Miss Shartell, please tell me once more what was the date on which you initialed the copies of those letters.

Miss SHARTELL. I initialed them the day after I had copied them. As near as I can remember, that was a week after Mr. Glavis returned from the East.

Mr. GRAHAM. About what day of the month, if you can tell us?

Miss SHARTELL. That was about the 9th of September.

Mr. GRAHAM. How soon after that did Mr. Christensen take charge of the office?

Miss SHARTELL. He took charge on the 20th of September. Well, he was up there before that. Mr. Glavis had received his telegram on the day he was to begin to turn over the receipts. Mr. Christensen came up from Portland and took charge.

Mr. GRAHAM. Did Mr. Glavis remain in charge of the office and in the office till Mr. Christensen came?

Miss SHARTELL. Yes, sir.

Mr. GRAHAM. And Mr. Christensen came and took charge about the 20th you think?

Miss SHARTELL. The week before. In that week he was up and took charge.

Mr. GRAHAM. What I wanted to get at was when he came; whether he took charge or not, when he came to the office?

Miss SHARTELL. I think it was about the 16th of September he came.

Mr. GRAHAM. That would be how many days after the initialing of the letters?

Miss SHARTELL. That would be over a week, I think; about a week before he came.

Mr. GRAHAM. How soon after that was it when these letters were the subject of inquiry or search?

Miss SHARTELL. Well, I never heard of it particularly until about October.

Mr. GRAHAM. That would be, speaking generally, about how long after Mr. Christensen came to the office?

Miss SHARTELL. About a month. That was when I heard of it.

Mr. GRAHAM. Who was it you first heard making inquiries or heard of making a search for those letters?

Miss SHARTELL. Mr. Sheridan came to me and asked me for the affidavit, with the questions, and asked me to answer them.

Mr. GRAHAM. Concerning these so-called missing letters?

Miss SHARTELL. Yes.

Mr. GRAHAM. Please fix that time as nearly as you can.

Senator FLETCHER. The statements in evidence will show.

Mr. BRANDEIS. I would like to say here that I desire to put in evidence all of these statements which this witness made at that time.

Mr. GRAHAM. If they show it, then I do not want to pursue it any further.

Senator FLETCHER. I merely suggest that she can refer to those to refresh her memory in this connection, Mr. Graham.

Mr. GRAHAM. If these show it, I do not care to bother the young lady about it. You say they do show it?

Mr. BRANDEIS. They show it. There is an affidavit or statement. I have not examined all of them, but I examined that typewritten copy.

The CHAIRMAN. Are they offered in evidence?

Mr. BRANDEIS. Yes, sir; I offer them in evidence.

(The statements of Miss Shartell are as follows:)

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Seattle, Wash., November 12, 1909.

Mr. J. M. SHERIDAN,
Special Agent, G. L. O., Seattle, Wash.

SIR: On November 11, 1909, I had occasion to go through all of the files containing the records of what are known as the "Alaska coal cases," and in doing so I again paid special attention to the list of letters and telegrams said to be missing from the said files, and, as before stated to you, I found none of them among the said files.

Respectfully,

ELLA M. SHARTELL.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Seattle, Wash., October 29, 1909.

Mr. J. M. SHERIDAN,
Special Agent, G. L. O., Seattle, Wash.

SIR: In reply to your inquiry as to my knowledge of the papers in the Alaska coal cases, I have the honor to advise as follows:

Along about the middle of August, 1909, Arthur R. Bowman, special agent, G. L. O., returned from Alaska and brought with him a list of names of claimants, principally in the McAlpine group, who had filed on claims subsequent to the time the first list was received. These were copied by me and arranged by towns, etc., so as to expedite the investigation. Most of these claimants were in Detroit, although a few were scattered around in different towns in the East. Shortly after Mr. Bowman left for the East for the purpose of interviewing these claimants, he wrote requesting a copy of the commissioner's decision in some matter, which he had left in a suit case in the office. I remember distinctly that the decision called for was on top of all the other matter in the suit case, so paid no attention to anything else which might have been with it.

Later, on September 15, 1909, Mr. Glavis dictated a letter to me for Mr. Bowman at Detroit, and forwarded him, per his request, a copy of the affidavit of Albert Roehm, one of the claimants in the McAlpine group, to aid him in his investigation; also in another letter of the same date he sent a copy of the affidavit of John W. Hartline, the agent for the Hartline group, in order that Mr. Bowman could see what facts Mr. Hartline had sworn to. No original papers were sent, and no other papers of which I have any knowledge. I had no knowledge whatever of the bunch of original letters said to have been brought by Mr. Bowman from the land office at Juneau, Alaska, until called to my attention a week or so ago.

The only other papers sent from this office in any of these cases of which I have any knowledge are the papers sent to Mr. S. J. Colter, chief of field division, Duluth, Minn., on October 16, 1909; also a few additional letters and telegrams sent October 19, 1909, copies of the lists of which are on file in this office.

Respectfully,

ELLA M. SHARTELL,
Stenographer in Office of Seventeenth Field Division.

Affidavit of Ella M. Shartell, of Seattle, Wash., relative to disappearance and loss of certain records, papers, and letters from the files in the office of the chief of field division, General Land Office, at Seattle, Wash.

STATE OF WASHINGTON, County of King, ss:clt:

On this, the 13th day of November, 1909, before me, William Carey, a notary public in and for the county and State aforesaid, came Ella M. Shartell, who, being first duly sworn, did upon her said oath declare that she would full, true, and correct answers make to all such interrogatories as might be propounded to her concerning the matters hereinafter severally mentioned and shown. Whereupon the said named Ella M. Shartell was interrogated, and to such interrogation responded all in the manner following, to wit:

First. Please state your name and present place of residence.

Answer. Ella M. Shartell, 217 W. Republican st., Seattle, Washington.

Second. In what employment are you now engaged, and in what capacity do you serve?

Answer. In office of chief of seventeenth field division at Seattle, Washington, as stenographer and typewriter.

Third. Where were you employed, and in what capacity, between the first day of August and the twenty-fifth day of September, 1909?

Answer. In the office of chief of seventeenth field division at Seattle, Washington, as stenographer and typewriter.

Fourth. Under whose direction and supervision were you then and there employed and serving?

Answer. L. R. Glavis up to and including September 18, 1909, and A. Christensen the remainder of the time.

Fifth. Did you then, or have you now, any knowledge or information concerning the pendency and prosecution of an investigation respecting the validity of thirty-three coal land entries, embracing lands in the Juneau land district, in the Territory of Alaska, commonly known as "the Cunningham group" of claims or entries?

Answer. I knew there was such a group on file in the office.

Sixth. What special agent, or special agents, were employed in that investigation at the same or at different times, if you know? Please state the name or names of such agent or agents and their present place of residence, if known to you.

Answer. S. N. Stoner, St. Albans Apartments, and A. Kennedy, Lincoln Hotel, both of Seattle, Washington, were in Alaska during this time, working on this group.

Seventh. Did you have any knowledge or information concerning the presence in the office of the chief of field division, in Seattle, of any papers or records pertaining to these claims, or any of them, and to the investigation then being conducted?

Answer. I only knew there were records and papers pertaining to this group on file in this office, but did not know just what those papers were.

Eighth. Where were those records and papers usually deposited and preserved?

Answer. In and as a part of the files of the chief of field division in the folders provided for that purpose.

Ninth. Are you aware of the fact that some of the papers composing the files pertaining to that investigation were, during the period mentioned in the third interrogatory, removed and transported from their proper place of custody, and that they have never been returned thereto?

Answer. The only knowledge I have of their being taken from the office is that about the 29th or 30th day of August all of the papers then in the office pertaining to said group, of which I have any knowledge, were taken from the files, and, as Mr. Sheridan had had them in his possession while in the office, I supposed they had all been taken to Washington, D. C., to which place he had gone. I know of no others being taken.

Tenth. Were you at any time a witness to the removal and transportation from such place of custody and from said office of any of said papers? Is so, please state what papers were so taken and carried away, and by whom.

Answer. I was not.

Eleventh. Were you present in the office of the chief of field division in Seattle when Mr. Arthur R. Bowman, a special agent of the General Land Office, returned from a journey to Alaska on or about the — day of August, 1909, and do you know or remember that on that occasion he brought to and left in said office a small leather satchel or case commonly carried by him when employed in the field?

Answer. I was present at said time, but paid no attention to what he carried except that he had a suit case, probably two, which he left in the office.

Twelfth. Did you know or did Mr. Bowman advise you or did you in anyway receive information concerning the contents of that case or satchel or did Mr. Bowman

make to you any statement or give to you any direction respecting its custody or the disposition of its contents?

Answer. Mr. Bowman never mentioned anything concerning the suit case to me whatever.

Thirteenth. Did you, at that time, or at any subsequent time, know, or in any wise learn, that, among other things, said satchel contained a large number of letters secured by Mr. Bowman from the register and receiver in charge of the district land office at Juneau, Alaska, some of which letters were written in relation to the so-called Cunningham group of coal-land entries? Please state all you may know or have learned in this connection.

Answer. I never had any knowledge as to the contents of said suit case, except that along about the first week of September, Mr. Bowman wrote requesting a paper be forwarded him at Detroit. He said the paper was in his small suit case and, as I remember plainly, the paper desired was on the top of the other matter in his case, and in getting it I paid no attention to anything else contained therein. The paper desired was some decision of the commissioner, but, at this time, I can not remember what. I had no knowledge that any of the above mentioned letters or papers were brought by Mr. Bowman from Alaska until about three weeks ago, when they were shown me by either Mr. Christensen or Mr. Sheridan.

Fourteenth. Were you present at any time between the dates mentioned in the third interrogatory, namely, August first and September twenty-fifth, 1909, when the above-mentioned satchel was opened and its contents examined? If so, please state by whom such inspection was made.

Answer. No.

Fifteenth. Did you then, or at any other time, see any of the letters or papers contained in said satchel, or which may have been contained therein, removed therefrom? If so, please state the name of the person by whom they were so removed, and what disposition was made of such removed papers, if you know.

Answer. I know of none being removed from the suit case.

Sixteenth. If you did not actually witness the opening of said case or satchel and the removal of papers therefrom, state whether you had any reason to believe that it had been so opened and its contents inspected? If so, please state your reason for so believing and the name of the person by whom you believe it to have been so opened.

Answer. Not knowing the contents of said suit case, I would have no reason to believe any papers were taken therefrom, or inspected, nor have I reason to believe it was opened for any purpose.

Seventeenth. Did you, at any time or in any manner, aid or assist any person or persons in the removal, carrying away, concealment, or suppression of any of the records, papers, or letters referred to in the foregoing interrogatories, or were you, at any time, a witness to any such act of removal, transportation, and subsequent concealment of any of such records or papers on the part of any other person or persons?

Answer. No; I have no knowledge of either of said acts.

Eighteenth. Have you any knowledge or information whatever concerning the present custody and possession of said missing records, papers, or letters? If so, please state what that knowledge is and describe the records or papers to which it relates. Please state any and all facts known to you which may bear on or tend to explain the disappearance and loss of any of the records, or papers, or letters.

Answer. I have no knowledge whatever as to the present custody of the said missing letters or papers.

ELLA M. SHARTELL.

Subscribed and sworn to before me by Ella M. Shartell this the 13th day of November, 1909.

[SEAL.]

WILLIAM CAREY,
Notary Public.

My commission expires October 21st, 1911.

Mr. GRAHAM. We are under some disadvantage when papers are offered in evidence in bulk because we do not know what is in them as in the present case. There are some things that they clear up that I did not know, and I did not know that they are in the papers. The assurance that they are is sufficient, and I will abandon the inquiry.

Senator FLETCHER. No, I do not think so. I merely suggest that you let her refer to the statement and see whether that was the day on which Mr. Sheridan took that matter up.

Mr. GRAHAM. I will ask Miss Shartell. Miss Shartell, do you recall from these papers whether the dates and events I have inquired about of you are in the papers?

Miss SHARTELL. The date I made the affidavit, do you mean?

Mr. GRAHAM. Well, the date when you initialed the letters; the date when Mr. Christensen took charge of the office, the time when these letters first became the subject of inquiry or search in the office. Do these papers explain those facts?

Miss SHARTELL. No, sir.

Mr. GRAHAM. Could you, by referring to the papers, explain them for us?

Miss SHARTELL. No, sir; I could not. I do not understand your question very well.

Mr. GRAHAM. I guess you are not to blame. Can you tell from the papers when you initialed them?

Miss SHARTELL. No, sir; I can not. I have no way of telling anything, when I initialed them or when I copied them.

Mr. GRAHAM. You have stated that about a week after you initialed them Mr. Christensen came to the office.

Miss SHARTELL. Yes, sir.

Mr. GRAHAM. He was there a few days during which Mr. Glavis was turning the affairs of the office over to him, and then Mr. Glavis left the office?

Miss SHARTELL. Yes, sir.

Mr. GRAHAM. And returned to it no more so far as you know?

Miss SHARTELL. No, sir—well, you mean to take charge?

Mr. GRAHAM. Did he have any purpose except on one occasion which, I think, you told us about, to confer with Mr. Christensen about something or other?

Miss SHARTELL. He returned that day; it was the Monday after he left the office and then returned later on. He came back one morning just for a few minutes on business.

Mr. GRAHAM. At that time he was not connected with the office, however, and did not handle any official papers that you know of?

Miss SHARTELL. No, sir; he did not.

Mr. GRAHAM. Now, from the time that Mr. Christensen took charge of the office until these papers became the subject of inquiry or search, you have stated it about one month?

Miss SHARTELL. Well, I can not remember exactly how long it was.

Mr. GRAHAM. Was it substantially about a month?

Miss SHARTELL. About that, I imagine.

Mr. GRAHAM. And during that month Mr. Glavis, so far as you know, was not about the office at all?

Miss SHARTELL. No, sir.

Mr. GRAHAM. Mr. Christensen was there about two days a week, I think you said?

Miss SHARTELL. Yes, sir.

Mr. GRAHAM. And the other gentleman, Mr. Parks, was it; how much of the time was he there during that month?

Miss SHARTELL. He was there off and on; he would go out into the field and come back and make his report. I do not know just how long.

Mr. GRAHAM. How about Mr. Sheridan; how much of that time was he there?

make to you any statement or give to you any direction respecting its custody or the disposition of its contents?

Answer. Mr. Bowman never mentioned anything concerning the suit case to me whatever.

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Seventeenth. Did you, at any time or in any manner, aid or assist any person or persons in the removal, carrying away, concealment, or suppression of any of the records, papers, or letters referred to in the foregoing interrogatories, or were you, at any time, a witness to any such act of removal, transportation, and subsequent concealment of any of such records or papers on the part of any other person or persons?

Answer. No; I have no knowledge of either of said acts.

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Miss SHARTELL. He returned that day; it was the Monday after he left the office and then returned later on. He came back one morning just for a few minutes on business.

Mr. GRAHAM. At that time he was not connected with the office, however, and did not handle any official papers that you know of?

Miss SHARTELL. No, sir; he did not.

Mr. GRAHAM. Now, from the time that Mr. Christensen took charge of the office until these papers became the subject of inquiry or search, you have stated it about one month?

Miss SHARTELL. Well, I can not remember exactly how long it was.

Mr. GRAHAM. Was it substantially about a month?

Miss SHARTELL. About that, I imagine.

Mr. GRAHAM. And during that month Mr. Glavis, so far as you know, was not about the office at all?

Miss SHARTELL. No, sir.

Mr. GRAHAM. Mr. Christensen was there about two days a week, I think you said?

Miss SHARTELL. Yes, sir.

Mr. GRAHAM. And the other gentleman, Mr. Parks, was it; how much of the time was he there during that month?

Miss SHARTELL. He was there off and on; he would go out into the field and come back and make his report. I do not know just how long.

Mr. GRAHAM. How about Mr. Sheridan; how much of that time was he there?

Mr. GRAHAM. If these show it, I do not care to bother the young lady about it. You say they do show it?

Mr. BRANDEIS. They show it. There is an affidavit or statement. I have not examined all of them, but I examined that typewritten copy.

The CHAIRMAN. Are they offered in evidence?

Mr. BRANDEIS. Yes, sir; I offer them in evidence.

(The statements of Miss Shartell are as follows:)

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Seattle, Wash., November 12, 1909.

Mr. J. M. SHERIDAN,
Special Agent, G. L. O., Seattle, Wash.

SIR: On November 11, 1909, I had occasion to go through all of the files containing the records of what are known as the "Alaska coal cases," and in doing so I again paid special attention to the list of letters and telegrams said to be missing from the said files, and, as before stated to you, I found none of them among the said files.

Respectfully,

ELLA M. SHARTELL.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Seattle, Wash., October 29, 1909.

Mr. J. M. SHERIDAN,
Special Agent, G. L. O., Seattle, Wash.

SIR: In reply to your inquiry as to my knowledge of the papers in the Alaska coal cases, I have the honor to advise as follows:

Along about the middle of August, 1909, Arthur R. Bowman, special agent, G. L. O., returned from Alaska and brought with him a list of names of claimants, principally in the McAlpine group, who had filed on claims subsequent to the time the first list was received. These were copied by me and arranged by towns, etc., so as to expedite the investigation. Most of these claimants were in Detroit, although a few were scattered around in different towns in the East. Shortly after Mr. Bowman left for the East for the purpose of interviewing these claimants, he wrote requesting a copy of the commissioner's decision in some matter, which he had left in a suit case in the office. I remember distinctly that the decision called for was on top of all the other matter in the suit case, so paid no attention to anything else which might have been with it.

Later, on September 15, 1909, Mr. Glavis dictated a letter to me for Mr. Bowman at Detroit, and forwarded him, per his request, a copy of the affidavit of Albert Roehm, one of the claimants in the McAlpine group, to aid him in his investigation; also in another letter of the same date he sent a copy of the affidavit of John W. Hartline, the agent for the Hartline group, in order that Mr. Bowman could see what facts Mr. Hartline had sworn to. No original papers were sent, and no other papers of which I have any knowledge. I had no knowledge whatever of the bunch of original letters said to have been brought by Mr. Bowman from the land office at Juneau, Alaska, until called to my attention a week or so ago.

The only other papers sent from this office in any of these cases of which I have any knowledge are the papers sent to Mr. S. J. Colter, chief of field division, Duluth, Minn., on October 16, 1909; also a few additional letters and telegrams sent October 19, 1909, copies of the lists of which are on file in this office.

Respectfully,

ELLA M. SHARTELL,
Stenographer in Office of Seventeenth Field Division.

Affidavit of Ella M. Shartell, of Seattle, Wash., relative to disappearance and loss of certain records, papers, and letters from the files in the office of the chief of field division, General Land Office, at Seattle, Wash.

STATE OF WASHINGTON, County of King, scilicet:

On this, the 13th day of November, 1909, before me, William Carey, a notary public in and for the county and State aforesaid, came Ella M. Shartell, who, being first duly sworn, did upon her said oath declare that she would full, true, and correct answers make to all such interrogatories as might be propounded to her concerning the matters hereinafter severally mentioned and shown. Whereupon the said named Ella M. Shartell was interrogated, and to such interrogation responded all in the manner following, to wit:

First. Please state your name and present place of residence.

Answer. Ella M. Shartell, 217 W. Republican st., Seattle, Washington.

Second. In what employment are you now engaged, and in what capacity do you serve?

Answer. In office of chief of seventeenth field division at Seattle, Washington, as stenographer and typewriter.

Third. Where were you employed, and in what capacity, between the first day of August and the twenty-fifth day of September, 1909?

Answer. In the office of chief of seventeenth field division at Seattle, Washington, as stenographer and typewriter.

Fourth. Under whose direction and supervision were you then and there employed and serving?

Answer. L. R. Glavis up to and including September 18, 1909, and A. Christensen the remainder of the time.

Fifth. Did you then, or have you now, any knowledge or information concerning the pendency and prosecution of an investigation respecting the validity of thirty-three coal land entries, embracing lands in the Juneau land district, in the Territory of Alaska, commonly known as "the Cunningham group" of claims or entries?

Answer. I knew there was such a group on file in the office.

Sixth. What special agent, or special agents, were employed in that investigation at the same or at different times, if you know? Please state the name or names of such agent or agents and their present place of residence, if known to you.

Answer. S. N. Stoner, St. Albans Apartments, and A. Kennedy, Lincoln Hotel, both of Seattle, Washington, were in Alaska during this time, working on this group.

Seventh. Did you have any knowledge or information concerning the presence in the office of the chief of field division, in Seattle, of any papers or records pertaining to these claims, or any of them, and to the investigation then being conducted?

Answer. I only knew there were records and papers pertaining to this group on file in this office, but did not know just what those papers were.

Eighth. Where were those records and papers usually deposited and preserved?

Answer. In and as a part of the files of the chief of field division in the folders provided for that purpose.

Ninth. Are you aware of the fact that some of the papers composing the files pertaining to that investigation were, during the period mentioned in the third interrogatory, removed and transported from their proper place of custody, and that they have never been returned thereto?

Answer. The only knowledge I have of their being taken from the office is that about the 29th or 30th day of August all of the papers then in the office pertaining to said group, of which I have any knowledge, were taken from the files, and, as Mr. Sheridan had had them in his possession while in the office, I supposed they had all been taken to Washington, D. C., to which place he had gone. I know of no others being taken.

Tenth. Were you at any time a witness to the removal and transportation from such place of custody and from said office of any of said papers? Is so, please state what papers were so taken and carried away, and by whom.

Answer. I was not.

Eleventh. Were you present in the office of the chief of field division in Seattle when Mr. Arthur R. Bowman, a special agent of the General Land Office, returned from a journey to Alaska on or about the — day of August, 1909, and do you know or remember that on that occasion he brought to and left in said office a small leather satchel or case commonly carried by him when employed in the field?

Answer. I was present at said time, but paid no attention to what he carried except that he had a suit case, probably two, which he left in the office.

Twelfth. Did you know or did Mr. Bowman advise you or did you in anyway receive information concerning the contents of that case or satchel or did Mr. Bowman

Miss SHARTELL. He was there all the time.

Mr. GRAHAM. During that month?

Miss SHARTELL. Yes, sir.

Mr. GRAHAM. Were there any other special agents or others connected with the office who were there during that time except those you have mentioned?

Miss SHARTELL. Yes, sir; there were several of them.

Mr. GRAHAM. Who were they?

Miss SHARTELL. Well, there were the regular special agents of the office; probably seven or eight of those.

Mr. GRAHAM. How much of the time were they about there?

Miss SHARTELL. They were there off and on just the same as Mr. Parks. They would come in and make their reports and go out; and there were the people who came out to Seattle from Washington on the Cunningham case.

Mr. GRAHAM. How long was it after the letters were first a subject of search until they were produced?

Miss SHARTELL. They were produced not until February 8.

Mr. GRAHAM. That would be from some time near the end of October until the 8th of February—that is, between the first search and the final one?

Miss SHARTELL. I believe those letters were the subject of search before that, but not to my knowledge.

Mr. GRAHAM. I am only asking for your knowledge now.

Miss SHARTELL. That would be, from the time I knew it, about October or November until February 8.

Mr. GRAHAM. That is all.

Mr. BRANDEIS. Miss Shartell, I omitted to ask you one question. These Spaulding stenographic notebooks that Mr. Glavis asked about in the letter referred to—that is, in the letter that Mr. Vertrees read—where were those notebooks; in the office?

Miss SHARTELL. I never had seen them myself. I suppose Mr. Spaulding took care of his own notebooks.

Mr. BRANDEIS. His headquarters were in the office?

Miss SHARTELL. Yes, sir.

Mr. JAMES. Did I understand you correctly when I thought you said that it was the next day after Mr. Parks made a search of the room upstairs for the books, or was it a week afterwards that Mr. Christensen went up there?

Miss SHARTELL. It was about a week afterwards.

Mr. JAMES. When he came into the room you stated that he had some papers in his hands—that is, Mr. Christensen—when he came into the room there, I believe you said, he stated to Mr. Parks, “You did not look very well?”

Miss SHARTELL. Yes, sir.

Mr. JAMES. That is, “You did not search very well;” is that what you understood him to mean?

Miss SHARTELL. About that.

Mr. JAMES. Did he have the letters that you had been looking for in his hand at that time?

Miss SHARTELL. Yes, sir.

Mr. JAMES. Did he hold them out at that time to Mr. Parks?

Miss SHARTELL. No, sir; he did not hold them out.

Mr. GRAHAM. I will ask Miss Shartell. Miss Shartell, do you recall from these papers whether the dates and events I have inquired about of you are in the papers?

Miss SHARTELL. The date I made the affidavit, do you mean?

Mr. GRAHAM. Well, the date when you initialed the letters; the date when Mr. Christensen took charge of the office, the time when these letters first became the subject of inquiry or search in the office. Do these papers explain those facts?

Miss SHARTELL. No, sir.

Mr. GRAHAM. Could you, by referring to the papers, explain them for us?

Miss SHARTELL. No, sir; I could not. I do not understand your question very well.

Mr. GRAHAM. I guess you are not to blame. Can you tell from the papers when you initialed them?

Miss SHARTELL. No, sir; I can not. I have no way of telling anything, when I initialed them or when I copied them.

Mr. GRAHAM. You have stated that about a week after you initialed them Mr. Christensen came to the office.

Miss SHARTELL. Yes, sir.

Mr. GRAHAM. He was there a few days during which Mr. Glavis was turning the affairs of the office over to him, and then Mr. Glavis left the office?

Miss SHARTELL. Yes, sir.

Mr. GRAHAM. And returned to it no more so far as you know?

Miss SHARTELL. No, sir—well, you mean to take charge?

Mr. GRAHAM. Did he have any purpose except on one occasion which, I think, you told us about, to confer with Mr. Christensen about something or other?

Miss SHARTELL. He returned that day; it was the Monday after he left the office and then returned later on. He came back one morning just for a few minutes on business.

Mr. GRAHAM. At that time he was not connected with the office, however, and did not handle any official papers that you know of?

Miss SHARTELL. No, sir; he did not.

Mr. GRAHAM. Now, from the time that Mr. Christensen took charge of the office until these papers became the subject of inquiry or search, you have stated it about one month?

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Mr. GRAHAM. Was it substantially about a month?

Miss SHARTELL. About that, I imagine.

Mr. GRAHAM. And during that month Mr. Glavis, so far as you know, was not about the office at all?

Miss SHARTELL. No, sir.

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Mr. GRAHAM. How about Mr. Sheridan; how much of that time was he there?

Miss SHARTELL. He was there all the time.

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Miss SHARTELL. Yes, sir.

Mr. JAMES. That is, "You did not search very well;" is that what you understood him to mean?

Miss SHARTELL. About that.

Mr. JAMES. Did he have the letters that you had been looking for in his hand at that time?

Miss SHARTELL. Yes, sir.

Mr. JAMES. Did he hold them out at that time to Mr. Parks?

Miss SHARTELL. No, sir; he did not hold them out.

Mr. JAMES. Did Mr. Parks make any reply asking what he meant by the statement, "He did not look very well?"

Miss SHARTELL. He did not make any reply that I know of.

Mr. JAMES. Did he make any reply at all?

Miss SHARTELL. Not that I remember; he may have, but none that I can recall now.

Mr. DENBY. What letters did you say he had in his hands?

Miss SHARTELL. Those letters that were found—the 24.

Mr. JAMES. The 24 letters that had been the subject of search were the letters he had in his hands?

Miss SHARTELL. Yes, sir.

Mr. JAMES. He said to him, "You did not search very well," and he made no reply at all?

Miss SHARTELL. Not that I know of. He may have, but I do not know.

Mr. VERTREES. Mr. James, you are laboring under a misapprehension. She has previously said that he was not searching for those at all.

Mr. JAMES. I understand what she has previously stated, but I am merely trying to find out what occurred when he came into the room where Mr. Parks was.

Mr. MADISON. You do say, if I understand you now, that Mr. Christensen had not gone up there for the purpose of searching after those letters?

Miss SHARTELL. He had not.

Mr. MADISON. He had gone up for the purpose of searching for what? I want to get this straight in my mind. I know you have testified to it once.

Miss SHARTELL. He had gone up for the purpose of searching for those telegrams. There was a telegram of April 11 and one of April 13 from Glavis to the commissioner and from the commissioner to Glavis, and for that letter from the commissioner to Glavis of June 3, 1908.

Mr. MADISON. Now, what had Parks gone up the week before to search for?

Miss SHARTELL. He had gone up to search for some field notebooks for Mr. Bowman.

Mr. MADISON. Then your testimony is that Parks also had not gone up to search for those missing letters?

Miss SHARTELL. No, sir; he had not—any other search except the field notebooks.

Mr. MADISON. Then he went up to search for a different thing than what Mr. Christensen went up to search for?

Miss SHARTELL. Yes, sir.

Mr. MADISON. And then he came back and made the remark, "You did not search very thoroughly."

Miss SHARTELL. That was about his remark.

Mr. MADISON. Now, why would he say that if he had gone up to search for something different from what Mr. Parks had gone up to search for? Just explain it.

Miss SHARTELL. Because Mr. Parks had come back and reported finding no papers at all—nothing.

Mr. MADISON. No papers at all?

Miss SHARTELL. He found nothing in the box but personal property of Mr. Glavis, and that is what he reported.

Mr. MADISON. And then Mr. Parks had gone up to search through those boxes for any papers at any time that might have reference to the land-office business?

Miss SHARTELL. Mr. Parks had gone up to search for those notebooks, and he had reported that he had found nothing but personal property in the box.

Mr. MADISON. That is it, and he reported that to you?

Miss SHARTELL. Yes, sir.

Mr. MADISON. That he had searched thoroughly through the box and found nothing except Glavis's personal property?

Miss SHARTELL. Yes, sir.

Mr. MADISON. Then you wired that?

Miss SHARTELL. I wired that he had searched the box and did not find Bowman's notebooks. I believe that was the reply.

Mr. MADISON. But you now state to us that he did state to you that he had found nothing but Glavis's personal property.

Miss SHARTELL. Yes, sir.

Mr. MADISON. And then afterwards Christensen went up and found the things which he went to look for and also found those 24 letters. Is that correct?

Miss SHARTELL. He did not find the things he looked for.

Mr. MADISON. He did not?

Miss SHARTELL. No sir.

Mr. MADISON. He did not find anything but the 24 letters?

Miss SHARTELL. Yes, sir; he found other things, but not what he had gone to look for. He found other things except the 24 letters, but not what he had gone to look for.

Mr. MADISON. Did he find anything besides Mr. Glavis's personal property?

Miss SHARTELL. Yes, sir.

Mr. MADISON. He found something else. Now, in addition to Mr. Glavis's personal property he found those 24 letters and found some other things which you have not yet told about, which is not included within his personal property.

Miss SHARTELL. Yes, sir.

Mr. MADISON. Now, then Mr. Christensen evidently, from what you say, had been told that Mr. Parks had not been able to find anything except Mr. Glavis's personal property, had he not?

Miss SHARTELL. Yes, sir.

Mr. MADISON. Who had told him that?

Miss SHARTELL. I telegraphed that he had not found the notebooks. That was all I was required to telegraph, as the result of my search, and when Mr. Christensen came from Portland he said there was nothing in there but personal property.

Mr. MADISON. That is, Parks told Christensen that?

Miss SHARTELL. Yes, sir.

Mr. GRAHAM. In your presence?

Miss SHARTELL. Yes, sir.

Mr. MADISON. And then he went up and found this other stuff and brought it down, and then, according to your best impression, Mr. Parks was surprised that he found anything else there except Glavis's personal property?

Miss SHARTELL. Yes, sir.

Mr. MADISON. That is all.

Mr. VERTREES. Miss Shartell, this copy of a telegram is handed to me as the one to which you referred. Please read it and see if you recognize it as the telegram.

Miss SHARTELL (after reading). Yes, sir.

Mr. VERTREES. I will read the telegram. It is as follows:

SEATTLE, WASH., February 2, 1910.

CHRISTENSEN,

322 Custom-House, Portland, Oreg.

Have carefully searched office. Parks and custodian searched boxes stored in building. No records of Bowman found. Have probably been destroyed. Letter follows.

SHARTELL.

O. B. Government rates. Collect.

Mr. BRANDEIS. Where is that letter, Mr. Vertrees?

Mr. VERTREES. I really do not know. I never heard of it before.

Mr. BRANDEIS. I request the production of that letter, and I would also like the original of the telegram. This appears to be a copy.

Mr. VERTREES. As I have said, I do not know where it is, but Mr. Christensen will produce it if it is possible. Miss Shartell, can you state the contents of the letter which you wrote?

Miss SHARTELL. I believe I can. I wrote the letter explaining more fully how he had searched the boxes, but that I thought probably they had been destroyed, as several other things had been destroyed around the building there. Before Mr. Glavis left there was a large box under the table in the large room containing a lot of miscellaneous files and books and things that had been sent from Spokane, I believe, when the division was established at Seattle, and they had never been sorted out thoroughly, and they were of no use to the office at the time; and as I understand it, several things had been put into that box that we thought had no value, and the box had been taken out and destroyed by the janitor of the building, and I thought probably those notebooks had been put into that box and destroyed with the other things by mistake.

Mr. VERTREES. Have you your notebook here with you?

Miss SHARTELL. It is in the office downtown.

Mr. VERTREES. Was that a dictated letter or one that you sat down and wrote?

Miss SHARTELL. One that I sat down and wrote.

Mr. VERTREES. Did you keep a copy of it?

Miss SHARTELL. Yes, sir.

Mr. VERTREES. I suppose we can furnish it.

Mr. BRANDEIS. Miss Shartell, you spoke of a box with a lot of papers that was, I understood it, under Mr. Glavis's desk?

Miss SHARTELL. No, sir; it was under a large desk in a large office—in the outer office.

Mr. BRANDEIS. In the outer office?

Miss SHARTELL. Yes, sir.

Mr. BRANDEIS. Has there been any trouble in finding any other papers beside those 24 letters?

Miss SHARTELL. Yes, sir; the committee has sent for papers and I have been unable to find some.

Mr. BRANDEIS. Has that been the only difficulty—that is, the result of the committee's calls—or have you had difficulty in finding other

papers which were required from time to time in the current business of the office?

Miss SHARTELL. No, sir.

Mr. BRANDEIS. When were those two telegrams of April 11 and 13, and that letter of June 3, 1908, found?

Miss SHARTELL. I do not know that they were ever found. They were sent for and I have looked for them, but could not find them, and reported so. That is all I know about them.

Mr. BRANDEIS. I think that is all.

Mr. VERTREES. Was not that letter of June 3 found in the files of the Forest Service, or do you know about that?

Miss SHARTELL. I do not know as to that.

The CHAIRMAN. Is that all? Are you both through with the witness?

Senator FLETCHER. I might ask one question of the witness. I have taken up but very little time of this committee. I just want to ask one question, with reference to the condition in which the papers were held by Mr. Christensen when he came in the office saying that he had brought them down. Were they in a package or in a bundle, or were they just loose in his hand?

Miss SHARTELL. Why, he had several papers in his arm—that is, he had the papers in his arm. That is all I know.

Senator FLETCHER. He did not unfold them and show them to you?

Miss SHARTELL. No, sir.

Senator FLETCHER. That is all.

Mr. BRANDEIS. And you are not certain yourself, I suppose, from anything you saw at that moment whether he had the originals and those two sets of carbon copies or not?

Miss SHARTELL. I did not see them in his arms.

Mr. BRANDEIS. All you know is that he told you he had them?

Miss SHARTELL. He showed them to me after he came in and went into the other office. He came immediately out and showed me the letters that he had found.

Mr. BRANDEIS. And he went into his own office?

Miss SHARTELL. Just back to his desk?

Mr. BRANDEIS. And he came back to you and showed you those original letters and the carbon copies?

Miss SHARTELL. Yes, sir.

Mr. VERTREES. Was Mr. O'Neill with him?

Miss SHARTELL. Yes, sir.

Mr. BRANDEIS. And what was done with those original letters and the carbon copies immediately after they were shown to you?

Miss SHARTELL. They were sent on here, I believe.

Mr. BRANDEIS. I mean what did you see done with them?

Miss SHARTELL. I did not see anything done with them. He showed them to me and took them back to his desk.

Mr. BRANDEIS. That is, he exhibited to you the bundle in opening it, I suppose?

Miss SHARTELL. Yes, sir.

Mr. BRANDEIS. Did you make a careful search of them, checking them over?

Miss SHARTELL. No, sir; I just saw that they had my initials on them.

Mr. BRANDEIS. That is, the copies had your initials on them.

Miss SHARTELL. The copies had my initials on them.

Mr. BRANDEIS. But you did not check them up in any way—I mean you did not check up each letter by date so as to know just what letters he had and what there were there, did you?

Miss SHARTELL. I looked at each one in looking at my initials.

Mr. BRANDEIS. You just glanced at them?

Miss SHARTELL. Just glanced over them.

Mr. BRANDEIS. But made no list of them—you checked up no list as against any other list?

Miss SHARTELL. No, sir.

The CHAIRMAN. Are you both through with the witness, gentlemen? If so, the witness will be discharged. You are discharged, Miss Shartell.

TESTIMONY OF GEORGE A. PARKS.

George A. Parks, having been first duly sworn by the chairman, testified as follows:

Mr. VERTREES. Mr. Parks, you are Mr. George A. Parks?

Mr. PARKS. Yes, sir.

Mr. VERTREES. What is your age?

Mr. PARKS. Twenty-seven years.

Mr. VERTREES. And your home?

Mr. PARKS. My home is in Denver. I have been located in Seattle for the past eight or nine months—since July.

Mr. VERTREES. In what business?

Mr. PARKS. I have been employed by the General Land Office as a practical miner. I have been employed since the 15th of July in the Seattle office as a practical miner by the General Land Office.

The CHAIRMAN. On mineral work?

Mr. PARKS. Yes, sir; on mineral work.

Mr. VERTREES. What were your duties?

Mr. PARKS. They gave me mineral applications—applications for coal lands. They gave me those applications to go and make examinations to see if the law had been complied with and if they had actually developed and opened the mine on the land.

Mr. VERTREES. What was your territory?

Mr. PARKS. Western Washington and part of Klickitat County, which is in eastern Washington.

Mr. VERTREES. Where do you make your headquarters?

Mr. PARKS. In Seattle.

Mr. VERTREES. In what office?

Mr. PARKS. In the office of the General Land Office, special agent's room.

Mr. VERTREES. Who are they?

Mr. PARKS. When I first went there in July there were two offices, one occupied by the special agents and one occupied by Mr. Glavis. I do not recall the number of the office he occupied at first, but the last office is No. 219 Federal Building.

Mr. VERTREES. Were those adjoining or on separate floors?

Mr. PARKS. They were on the same floor, but not adjoining; they were on different corridors.

Mr. VERTREES. You moved later, I think, into this other room?

Mr. PARKS. Yes, sir.

Mr. VERTREES. Do you know anything about whether there was any excess of papers over and above those that were in the cases around in boxes, or otherwise? If so state to the committee what was the condition, and what was done to relieve that condition.

Mr. PARKS. When I first returned, on the 15th of July, 1909, as I have stated before, there were two offices occupied by the agents and Mr. Glavis. One office, where the special agents do most of their work, was in the corridor across from the local land office there. In this room there were two desks, as I recall it, and one large table. On this table and around in the corners and scattered all over were a lot of papers and things, and there was no order in there. There were numerous papers scattered around; and those offices were later consolidated. I was in the field. I had been assigned to a number of cases. I reported to Seattle after making some examinations with some notebooks and some notes. I took those notes and notebooks and placed them in one of those desks in this first room——

Mr. VERTREES. Those were field notebooks, were they?

Mr. PARKS. Yes, sir; they were field-note books and notes. I again went out in the field, and when I returned the second time the rooms of the office had been consolidated, and I made search for my notes and notebooks which I had placed on this desk in this other room, and I desired them to make my reports, and in looking around the office I found them in a box under one of the tables in the room, 219 Federal Building, among a lot of other old records which I did not examine, stationery and one thing and another, which had just been placed in those boxes to get it out of the road, I assume.

Mr. VERTREES. What was done with those boxes and books?

Mr. PARKS. I have no knowledge what became of that box.

Mr. VERTREES. What I want to get at is was it removed from there and disappeared?

Mr. PARKS. It was taken out and disappeared somewhere; yes, sir.

Mr. VERTREES. When was that?

Mr. PARKS. Some time when I was in the field; I do not know exactly when.

Mr. VERTREES. When would you say it was? Give us the month.

Mr. PARKS. It was some time, I believe, prior to November, 1909.

Mr. VERTREES. Prior to November?

Mr. PARKS. Prior to November, 1909.

Mr. VERTREES. Would you think it was September or October or somewhere in there, or July or August? That is what I mean.

Mr. PARKS. It was some time between September and——

Mr. VERTREES. What I wanted to get at was it during Mr. Christensen's administration or Mr. Glavis's administration?

Mr. PARKS. I do not recall.

Mr. VERTREES. At any rate these boxes disappeared from the room?

Mr. PARKS. Yes, sir.

Mr. VERTREES. You do not know who took them out?

Mr. PARKS. I have no knowledge.

Mr. VERTREES. Now, when was the first that you heard of these papers that were found and discovered—these 24 missing letters that we have been talking about?

Mr. PARKS. The first that I heard that there were any missing papers or any missing records of any sort was on the 15th of November, 1909, when there was a slip handed me in the office by Mr.

Christensen requesting me to make a search of my desk to see whether there were any papers or anything of that sort in my desk. I did not find any papers of any kind, and I so noted on the list and returned it to Mr. Sheridan. I signed the list and returned it to Mr. Sheridan.

Mr. McCALL. What date was that?

Mr. PARKS. November 15, I believe, was the date. It was about the middle of November.

Mr. VERTREES. Were you aware of the fact that demands were made by this committee, or at the instance of this committee, for papers and documents out there?

Mr. PARKS. Not until the 1st of February.

Mr. VERTREES. Where were you in the meantime?

Mr. PARKS. During the month of January I spent the entire month, or nearly the entire month, in Callam County, Wash.

Mr. VERTREES. In the discharge of your duties?

Mr. PARKS. Yes, sir.

Mr. VERTREES. When did you come in, do you know?

Mr. PARKS. I do not know; my daily reports will show.

Mr. VERTREES. When you came in in February you did hear that they were demanding documents and papers?

Mr. PARKS. I was in the office the latter part of January or the first of February—

Mr. VERTREES. Do you recall any of the papers that were called for?

Mr. PARKS. I think on February 1, the first definite knowledge I had of any papers was a message, a telephone message, from Mr. Christensen requesting certain letters. The telegram or telephone message was addressed to Miss Shartell. It was late in the evening, and she asked me to assist her in finding those papers. She said—

Mr. VERTREES. Let me stop you there. Mr. Christensen was in charge, but he was for the most part at Portland, was he not?

Mr. PARKS. Yes, sir.

Mr. VERTREES. And this telegram came over from Portland to the office at Seattle?

Mr. PARKS. Yes, sir.

Mr. VERTREES. You say she asked you to help her look up the papers?

Mr. PARKS. Yes, sir; it was late in the evening.

Mr. VERTREES. The papers that you were looking for, do you recall what they were?

Mr. PARKS. A particular letter that I was looking for was in the Stracey group of the Alaska coal claims. That is the only one I recall, and the reason I went to look for those papers in the Stracey group, they were filed with Mr. Todd, United States district attorney, in his office. I went from our office to his office on the floor above and requested his clerk to show me the files in the Stracey group. I went over those files, but did not find the letter requested by Mr. Christensen or by the committee.

Mr. VERTREES. You said that Mr. Christensen asked you about the papers and left a memorandum on your desk. I here show you a memorandum and ask you if that is the memorandum to which you refer?

Mr. PARKS. Yes, sir; that is my notation and my signature at the bottom.

Mr. VERTREES. Do you know anything about whether there was any excess of papers over and above those that were in the cases around in boxes, or otherwise? If so state to the committee what was the condition, and what was done to relieve that condition.

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Mr. VERTREES. Let me stop you there. Mr. Christensen was in charge, but he was for the most part at Portland, was he not?

Mr. PARKS. Yes, sir.

Mr. VERTREES. And this telegram came over from Portland to the office at Seattle?

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Mr. PARKS. A particular letter that I was looking for was in the Stracey group of the Alaska coal claims. That is the only one I recall, and the reason I went to look for those papers in the Stracey group, they were filed with Mr. Todd, United States district attorney, in his office. I went from our office to his office on the floor above and requested his clerk to show me the files in the Stracey group. I went over those files, but did not find the letter requested by Mr. Christensen or by the committee.

Mr. VERTREES. You said that Mr. Christensen asked you about the papers and left a memorandum on your desk. I here show you a memorandum and ask you if that is the memorandum to which you refer?

Mr. PARKS. Yes, sir; that is my notation and my signature at the bottom.

Mr. VERTREES. Mr. Chairman, I wish to put that memorandum in evidence and to state merely now that it is a memorandum that contains a list of those 24 missing letters, and none other. It is dated "Seattle, Washn., 11-15-09," and at the bottom of it is this:

I have made a thorough search of all papers in my possession and did not find any of the above mentioned letters therein. Very respectfully George A. Parks 11-15-09. Seattle, Washn.

Mr. BRANDEIS. You are putting that in evidence?

Mr. VERTREES. Yes, sir.

The CHAIRMAN. That is admitted.

(The paper referred to is as follows:)

MEMORANDUM.

SEATTLE, WASH., 11-15-09

Letter from Thos. Payne, August 3, 1907.
 Letter from Clarence Cunningham, December 11, 1907.
 Letter from Clarence Cunningham, September 26, 1907.
 Letter from W. S. Yearsley, December 23, 1907.
 Letter from Jas. D. Finch, June 3, 1908.
 Letter from Clarence Cunningham, May 9, 1908.
 Letter from Clarence Cunningham, March 10, 1908.
 Letter from Clarence Cunningham, March 19, 1908.
 Letter from Wm. Sulzer, May 23, 1908.
 Letter from Frank Watson, April 3, 1908.
 Letter from Clarence Cunningham, April 13, 1908.
 Letter from Clarence Cunningham, March 14, 1908.
 Letter from H. R. Harriman, March 12, 1908.
 Letter from Arthur D. Jones, January 7, 1908.
 Telegram from Clarence Cunningham, January 8, 1908.
 Letter from A. H. Wheatley, January 4, 1908.
 Letter from R. A. Ballinger, February 23, 1908, or December 23, 1908.
 Letter from Walter M. French, April 19, 1909.
 Letter from M. A. Green, April 23, 1908.
 Letter from M. A. Green, January 7, 1909.
 Letter from Wendell McLaughlin, December 31, 1906.

11-15-09.

I have made a thorough search of all papers in my possession and did not find any of the above-mentioned letters therein.

Very respectfully,

GEO. A. PARKS.

Mr. VERTREES. What next do you know about any papers called for? You have stated that you could not find the one that you have mentioned about the Stracey group. Do you recall what next?

Mr. PARKS. On the following morning Miss Shartell received a telegram from Mr. Christensen stating that someone had wired for Bowman's notebooks.

Mr. VERTREES. Does that mean field notebooks?

Mr. PARKS. Field notebooks. I took it to mean Bowman's field notebooks prior to January 1, 1909. That was my understanding of the telephone message, and I had been through the files in the office more or less and did not remember any notebooks of any sort around, and I thought of my notebooks, how they had been misplaced at the time I have spoken of previous to this, and I commenced to look for that box in which my books were. Those notebooks were ordinary notebooks about that long and perhaps that wide [indicating], and I thought maybe if I could locate that box I could find Bowman's missing reports in it. It was with that idea that I went to Mr. O'Neill, who is the assistant custodian of the building there, and asked

him to show me all the places in the building where a box could possibly have been stored. It was with that view that I started out. Mr. O'Neill first took me to the grand-jury room, which is on the floor above our office. We went through the room. He opened the door for me and I stepped in and saw that the room was bare; there was nothing in there except a table and some chairs. He next took me into the storeroom used by the customs service, in which are stored lots of records of the United States marshal and customs people. In there there were two boxes with Mr. Glavis's name on them. I did not examine those boxes in any way. Mr. O'Neill informed me that they were a music box and records, the personal property of Mr. Glavis. I did not disturb them at all. I then went over to the storeroom used by him in the building.

The CHAIRMAN. By O'Neill?

Mr. PARKS. Yes, sir; O'Neill, where they stored all the office records and stuff—not records, but they are supplies—and in this room there were a number of boxes and rugs and one thing and another, one large box with Mr. Glavis's name on it and several barrels; I did not pay much attention to them; there were a number of them, and a table, and on this table were two very fine bearskin rugs, one white and one black.

The CHAIRMAN. This was the only room there where you found the two other boxes that you referred to with Glavis's name that you did not examine?

Mr. PARKS. Yes, sir.

The CHAIRMAN. Where were these Glavis boxes that you did not examine?

Mr. PARKS. On the first floor.

The CHAIRMAN. With reference to what room?

Mr. PARKS. It is down the corridor; I do not know just how many rooms, but it is down at the end of the corridor.

The CHAIRMAN. Did he have a number on it?

Mr. PARKS. Yes, sir; he had a number on it. I did not pay much attention to it. I was just going along with Mr. O'Neill.

The CHAIRMAN. Which way was that from the other room where you found the box you examined?

Mr. PARKS. Opposite it.

The CHAIRMAN. Across the hall?

Mr. PARKS. Across the hall. That was this other storeroom. As I have said, there were these two bear rugs and this large box with Mr. Glavis's name on it. Mr. O'Neill told me that all of this stuff up there was Mr. Glavis's personal property, and I did not disturb it in any way. On this box there was one board entirely loose, and Mr. O'Neill told me that it had always been that way, always loose. The other board was just tacked down, at least it came off very easily. Mr. O'Neill and I went over to the box, and I am not quite clear whether I took the board off first or whether Mr. O'Neill did; at any rate, that loose board was taken off and the other slipped back and fell into the box. In the box, which was only about half full, there was what appeared to be a sleeping bag and a tent, and at one end of the box were a number of books. I did not disturb anything in the box. I noticed also a dictionary, what was apparently a large dictionary, in the room, but I did not disturb anything in the box whatever, and Mr. O'Neill shut the box up after I walked away from

it. I satisfied myself that they were Mr. Glavis's personal effects, and I had no right to search them and did not examine or make any search of them.

Mr. VERTREES. Have you been in the other committee room here since you have been here?

Mr. PARKS. Yes, sir.

Mr. VERTREES. Is that box that you refer to in there?

Mr. PARKS. That is the box; yes, sir.

The CHAIRMAN. This box in the room back here is the box you refer to?

Mr. PARKS. Yes, sir.

Mr. McCALL. That is the last box you referred to?

Mr. PARKS. Yes, sir. There were a number of barrels there; I do not know as to the number of barrels, also marked with Mr. Glavis's name. There was another box which I thought was a blueprint frame with Mr. Glavis's name on it. The reason I thought this was a blueprint frame was because it stood for a long time in 219 Federal Building in the special agent's room and I supposed it was a blueprint frame or something belonging to the office. I did not examine that, either.

Mr. VERTREES. If I understand you, regarding that which was Mr. Glavis's personal property, you did not go into it?

Mr. PARKS. No, sir.

Mr. VERTREES. You did not put any papers in it, did you?

Mr. PARKS. No, sir.

Mr. VERTREES. Did Mr. O'Neill?

Mr. PARKS. He did not.

Mr. VERTREES. Was anybody with you but Mr. O'Neill?

Mr. PARKS. There was not.

Mr. VERTREES. And he was with you?

Mr. PARKS. Mr. O'Neill was with me. I asked him to accompany me.

Mr. VERTREES. After you left that room did you go anywhere else?

Mr. PARKS. No, sir; we went downstairs, and I told Miss Shartell to wire Mr. Christensen that we could not find any notebooks.

Mr. VERTREES. What next? Do you know of any missing papers now?

Mr. PARKS. It was about a week after, I think, when Mr. Christensen came to Seattle from Portland; he usually came over the first of the week. He came up there, and I went to his office and sat down in front of his desk and told him about what I had done. I told him about the boxes, and told him that Mr. O'Neill told me they were the personal property of Mr. Glavis, and I also stated that I had seen in the boxes what was in the nature of personal stuff. I told him that I did not consider that I had any right to search that stuff for any papers or notebooks—I was not looking for papers, in fact; I was only looking for notebooks, and at this time I suggested that another examination should be made. I suggested that if another examination was desired it should be made by some one in authority.

Mr. VERTREES. Then what was done?

Mr. PARKS. Then, I presume, that Mr. Christensen went with Mr. O'Neill upstairs.

Mr. VERTREES. You did not go?

Mr. PARKS. No, sir.

Mr. VERTREES. Later on did you see them with any papers that Mr. Christensen had?

Mr. PARKS. Later the same day I was making out reports. My desk is directly opposite the door—the only entrance to 219. Mr. O'Neill and Mr. Christensen came in carrying some books and papers, and Mr. Christensen remarked in a jocular manner that he guessed that I did not make a very good search, and they went on with their papers. I do not know what they had other than I assisted in making a list of some records and blank books and other things that Mr. Christensen brought to me and said that he had found in the barrel.

Mr. VERTREES. Do you know whether he had those 24 letters and those copies?

Mr. PARKS. I do not know it of my own knowledge; no, sir.

Mr. VERTREES. He did not say that he did have?

Mr. PARKS. He did not state to me that he had found them. He did not specifically state anything, for I knew nothing of those letters.

Mr. VERTREES. But he and Mr. O'Neill came in together?

Mr. PARKS. They came in together; yes, sir.

Mr. VERTREES. Do you know anything more about it?

Mr. PARKS. Nothing further; no, sir—that is, about those papers.

Mr. VERTREES. What floor was this room on in which this box was kept?

Mr. PARKS. I went up in the elevator, as I recall it, then on the fourth floor—I am not certain as to that.

Mr. VERTREES. What floor is your office on?

Mr. PARKS. On the second floor.

The CHAIRMAN. It was above the office?

Mr. PARKS. It was above the office, yes, sir; and we took the elevator going up.

Mr. VERTREES. This was the 8th of February, as I understand you, when this happened?

Mr. PARKS. When I reported to Mr. Christensen, it was about one week later.

Mr. VERTREES. So it was about a week before that when you went up there?

Mr. PARKS. When I went up there; yes, sir.

Mr. VERTREES. Have you any further knowledge of those papers than such as you have given us?

Mr. PARKS. No, sir; I never saw the 24 missing letters at any time.

Mr. VERTREES. You stated that O'Neill and Christensen came in together. Did they both have papers?

Mr. PARKS. Yes, sir; both of them were carrying something. I am not absolutely certain. As I recall it, Mr. O'Neill was carrying some papers stacked in his hands in this manner [indicating].

Mr. VERTREES. You reported to them the result of your search immediately on making it?

Mr. PARKS. When I came downstairs, I told Miss Shartell to wire Mr. Christensen that O'Neill and I had looked through the building and did not find any of Bowman's notebooks.

Mr. VERTREES. That was the only thing you had been looking for?

Mr. PARKS. Yes, sir; the only thing I had been looking for. I had nothing else on my mind.

Mr. VERTREES. You may examine.

Mr. BRANDEIS. Mr. Chairman, I shall ask Mr. Parks to remain here until after all the witnesses dealing with this subject of missing papers have been examined, but there are some questions that I would like to ask him now. You said, Mr. Parks, that this room in which you found it was what was, as I understand it, the custodian's storeroom?

Mr. PARKS. That is the way I understand it; yes, sir. He had different things in it.

Mr. BRANDEIS. How large a room was it?

Mr. PARKS. It is a pretty good-sized room; I do not know just how large it is. I have not been there but a few minutes and took no special notice of the size of the room.

Mr. BRANDEIS. How large was it as compared with the grand-jury room?

Mr. PARKS. It was much larger than the grand-jury room; yes, sir, I should say it was much larger than the grand-jury room. Not a great deal larger, but some larger.

Mr. BRANDEIS. How near is it to the grand-jury room?

Mr. PARKS. It is on the same floor and on the same corridor, but the grand-jury room is here [indicating], and this was here, on the opposite side of the corridor and at the end of the corridor.

Mr. BRANDEIS. In this storeroom that you call the custodian's storeroom there were a lot of things besides these books and barrels of Glavis's, were there not?

Mr. PARKS. Yes, sir.

Mr. BRANDEIS. Spread around in the way?

Mr. PARKS. Yes, sir, as I recall it. There was a rug rolled up across the room.

Mr. BRANDEIS. These handsome bearskins that you referred to were polar-bear skins, were they?

Mr. PARKS. One was a polar-bear skin and the other was a black-bear skin. There were two of them, one on top of the other.

Mr. BRANDEIS. You spoke of Mr. O'Neill closing up the box after you had looked into it?

Mr. PARKS. Yes, sir.

Mr. BRANDEIS. Do you mean by that that he had nailed it up?

Mr. PARKS. No, sir; the two boards were loose. All he had to do was to pick up the board with the nails in it and press it down—just lay it down on it.

Mr. BRANDEIS. There were no nails used?

Mr. PARKS. No, sir; he may have struck it with the other board.

Mr. BRANDEIS. He took off one board to get into it, did he?

Mr. PARKS. Yes, sir.

Mr. BRANDEIS. And they were not nailed down at all?

Mr. PARKS. One of them was absolutely loose. There were no nails in it.

Mr. BRANDEIS. There were no nails in one at all?

Mr. PARKS. No, sir.

Mr. BRANDEIS. And as to the other, you say your impression is there were some nails, but it was simply laid on, practically?

Mr. PARKS. Yes, sir.

Mr. BRANDEIS. When you looked into that box, which I understood you to say was about half full—

Mr. PARKS. Yes, sir, about half; it was not clear full.

Mr. BRANDEIS. What did you see as you looked in it?

Mr. PARKS. What appeared to be a tent and a fur sleeping bag and a number of books packed in that end of the box. I did not look at it at all. There was also some kind of a dictionary, I took it to be. I could not say that it was a dictionary.

Mr. BRANDEIS. Were those books fairly large books, or were some of them pretty large books?

Mr. PARKS. Not as I recall it.

Mr. BRANDEIS. How about the dictionary?

Mr. PARKS. The dictionary was the only large one. The impression that I got was that the other ones were just an ordinary library, fiction books.

Mr. BRANDEIS. Did you take any of the things out in order to look at them?

Mr. PARKS. No, sir.

Mr. BRANDEIS. You simply looked in?

Mr. PARKS. I just looked in to satisfy myself.

Mr. BRANDEIS. You simply looked in and you could see all there we in the box?

Mr. PARKS. All on the top.

Mr. BRANDEIS. All on the top through the opening that there was in those two boards?

Mr. PARKS. Yes, sir.

Mr. BRANDEIS. Now, then, you did not see any papers; you did not notice any papers in there at all?

Mr. PARKS. No, sir.

Mr. BRANDEIS. Of any kind?

Mr. PARKS. No, sir; I was not looking for any papers.

Mr. BRANDEIS. And you did not notice any as a matter of fact?

Mr. PARKS. I did not notice any.

Mr. BRANDEIS. And you were in there all the time with Mr. O'Neill?

Mr. PARKS. Yes, sir.

Mr. BRANDEIS. You went to him to get the key?

Mr. PARKS. Yes, sir; I didn't have the key; never had the key in my possession. I wanted to get the key and he opened the door.

Mr. BRANDEIS. And you went in and looked around?

Mr. PARKS. Yes, sir.

Mr. BRANDEIS. Now, this other room, this first storeroom you went to, which I believe you called——

Mr. PARKS. The customs storeroom.

Mr. BRANDEIS. That was the room where you saw these two closed boxes of Glavis's which you understood were music boxes, a mechanical music box and the other box containing the records for this music box?

Mr. PARKS. Yes, sir. I did not know——

Mr. BRANDEIS. That is what Mr. O'Neill said was in them?

Mr. PARKS. Yes, sir.

Mr. BRANDEIS. And before that—it was before that that he had taken you into the grand jury room?

Mr. PARKS. The grand jury room was the nearest to the elevator and we just made the rounds.

Mr. BRANDEIS. The grand jury room; you looked there, and there was nothing in there?

Mr. PARKS. No, sir.

Mr. BRANDEIS. No box or barrels?

Mr. PARKS. No, sir.

Mr. BRANDEIS. All you saw there was a table and some chairs?

Mr. PARKS. I am not certain whether there were any chairs there or not, but the table I know was there.

Mr. BRANDEIS. Well, a table?

Mr. PARKS. Yes.

Mr. BRANDEIS. Were there any other rooms on that floor?

Mr. PARKS. Yes, sir.

Mr. BRANDEIS. But you did not go into those other rooms?

Mr. PARKS. No, sir.

Mr. BRANDEIS. I suppose because Mr. O'Neill told you there was nothing in there; or were they occupied by others?

Mr. PARKS. They were occupied by others, and I did not question him as to that. My first request of O'Neill was to show me all the places in the building where these old boxes could possibly be stored, and I made no further request.

Mr. BRANDEIS. And then you went down and told Miss Shartell that you had made that request?

Mr. PARKS. Yes.

Mr. BRANDEIS. That statement, which I have not examined, but which Mr. Vertrees put in evidence, is that the only statement which you made in regard to any missing papers, or did you make some other statement or affidavit?

Mr. PARKS. It seems to me that I made some other kind of an affidavit regarding some papers, but I do not recall what it was. It seemed to me that I made one and sent it to Mr. Christensen, but I would not be sure as to that.

Mr. BRANDEIS. If your impression is correct that you made one, when was it that you made it?

Mr. PARKS. My impression is that it was subsequent to this search afterwards, about some other matters, but I am not certain.

Mr. BRANDEIS. You mean subsequent to February 1, if it was about that date, or the 2d, somewhere around there?

Mr. PARKS. Yes, sir.

Mr. BRANDEIS. It was subsequent to that?

Mr. PARKS. Yes.

Mr. BRANDEIS. There had been no other affidavits that you remember between this one in November, if I have the date right, and February?

Mr. PARKS. No, sir; you see I was in the field. During all of December I was in the field, and nearly all of January, up to, I think, the 23d of January. My daily reports will show when I returned to the office.

Mr. BRANDEIS. And then you went back to the office, and it was while you were there? It was largely a matter of accommodation to Miss Shartell that you made this search that you did make?

Mr. PARKS. Yes.

Senator PURCELL. Mr. Parks, how many searches did you make for those papers?

Mr. PARKS. I never did search for any papers, only for that one letter in the Stracy group.

Senator PURCELL. Only for one letter in the Stracy group?

Mr. PARKS. Yes; I went up to Mr. Todd's office to look for that.

Senator PURCELL. What time was that?

Mr. PARKS. That was on the evening of February 10.

Senator PURCELL. Had you any occasion to make any investigation of the papers in your possession for the purpose of determining what you had in your possession prior to that time?

Mr. PARKS. Prior to February?

Senator PURCELL. Yes.

Mr. PARKS. In November.

Senator PURCELL. What was the occasion of making an investigation then?

Mr. PARKS. This letter or this statement which has been offered in evidence here, was given to me, and I searched my desk at that time.

Senator PURCELL. Who gave it to you?

Mr. PARKS. Mr. Christensen laid it on my desk; he gave one to everyone in the office, all of the special agents in the office.

Senator PURCELL. He gave to each one of them a copy of that paper which was offered in evidence here?

Mr. PARKS. Yes, sir.

Senator PURCELL. Now, for what purpose did he give you that copy?

Mr. PARKS. With instructions to kindly search my desk and ascertain whether or not there were any of those papers in my desk.

Senator PURCELL. And those papers enumerated in that letter or statement were these missing letters, were they?

Mr. PARKS. Well, all the missing letters that I know of.

Senator PURCELL. Is this it [exhibiting a paper]?

Mr. PARKS. Yes.

Mr. VERTREES. Yes; they are the letters.

Senator PURCELL. Did you make a search for these papers?

Mr. PARKS. Yes, sir; I searched for them through the desk.

Senator PURCELL. And after making the search did you, at the bottom of the paper, write "I have made a thorough search," etc., and can not find them?"

Mr. PARKS. Yes, sir.

Senator PURCELL. And you signed that?

Mr. PARKS. Yes; I signed it and gave it to Mr. Sheridan.

Senator PURCELL. At that time your offices were in two rooms?

Mr. PARKS. No, sir.

Senator PURCELL. Were they all consolidated?

Mr. PARKS. Yes, sir.

Senator PURCELL. All in one room?

Mr. PARKS. Yes, sir; 219 of the Federal Building.

Senator PURCELL. Did you know where the Glavis property was at that time?

Mr. PARKS. I did not know he had any property in the building until February 2, 1910.

Senator PURCELL. Did you know, either of your own knowledge or from anything that was said to you, why it was that on November 15, 1909, these letters were of any importance?

Mr. PARKS. No, sir; I had been out in the field practically all summer and knew nothing whatever of any of these cases or anything of this sort.

Senator PURCELL. You never heard at that time of any matter arising that made these letters important, did you?

Mr. PARKS. No, sir; I didn't know what those letters were about.

Senator PURCELL. You didn't know what they were about?

Mr. PARKS. No, sir.

Senator PURCELL. You say that Mr. Christensen gave a copy of the statement or memorandum to every employee in the office?

Mr. PARKS. Yes, sir.

Senator PURCELL. And asked them to make search?

Mr. PARKS. Yes, sir.

Senator PURCELL. As early as November 15, 1909?

Mr. PARKS. Yes, sir.

Senator PURCELL. And you all reported then, so far as you know, that you could not find them, did you not?

Mr. PARKS. Yes, sir; so far as I know. I did not see any of the others, of course, except to see that he gave them copies.

Senator PURCELL. You heard that the reports were all like yours?

Mr. PARKS. Yes, sir.

Senator PURCELL. And they could not be found?

Mr. PARKS. No, sir.

Senator PURCELL. You do not know of your own knowledge or from anything that you had heard that had arisen that necessitated a search for these papers at that time, did you?

Mr. PARKS. No, sir.

Senator PURCELL. Never heard of it?

Mr. PARKS. No, sir.

Mr. JAMES. Were you in the room where the young lady was, Miss Shartell, when Mr. Christensen came in there that day after he had made the search and found the papers?

Mr. PARKS. Yes, sir; I was in the room.

Mr. JAMES. Do you recall his coming in there with the letters in his hand, or under his arm, and stating to you that you surely did not look very well, or did not search very well?

Mr. PARKS. Mr. Christensen did not direct that statement to me directly; he addressed it to everyone in the office, just in a jocular manner. He just said: "I guess you people did not look very well for those things."

Mr. JAMES. He said, "I guess you people did not look very well for those things?"

Mr. PARKS. Something to that effect, in a jocular statement.

Mr. JAMES. Did he not direct that remark to you?

Mr. PARKS. Not directly.

Mr. JAMES. Didn't he address that to you?

Mr. PARKS. Not directly.

Mr. JAMES. For the reason that you, yourself, had been up there looking for them—a telegram had been sent to him—you had searched for them and could not find them, and did he not for that reason address that statement to you?

Senator SUTHERLAND. The witness did not search for those papers.

Mr. JAMES. I understand, Senator; I am merely asking a question about these papers that were found.

Senator SUTHERLAND. I think the question ought not to embody anything that the witness had not stated.

Mr. JAMES. I am not embodying anything that the witness has not stated. I do not intend to, and have no idea of doing it. I merely asked if that occurred.

Mr. PARKS. My impression is that he addressed that remark to the entire force in the office. I was sitting beside the door writing on the typewriter.

Mr. JAMES. You heard it, did you not?

Mr. PARKS. Yes, sir.

Mr. JAMES. Did you make any reply to it?

Mr. PARKS. I think not.

Mr. JAMES. You went there for the purpose of looking for some notebooks?

Mr. PARKS. Notebooks; yes, sir.

Mr. JAMES. You, of course, saw that he had letters, did you not, under his arm?

Mr. PARKS. My impression is that Mr. Christensen did not have the letters.

Mr. JAMES. That is your impression?

Mr. PARKS. Mr. Christensen and Mr. O'Neill were carrying the things, and my impression is that O'Neill had the papers and Christensen had a bunch of books and stuff, canceled check books and things.

Mr. JAMES. Isn't it true that Mr. Christensen had the letters?

Mr. PARKS. Not that I believe; no, sir.

Mr. JAMES. Is your memory clear as to that?

Mr. PARKS. Not absolutely clear as to who was carrying them—as to whether Mr. Christensen or Mr. O'Neill was carrying the papers and the books. They were in two separate bunches. Mr. O'Neill or Mr. Christensen had the letters, or Mr. Christensen or Mr. O'Neill had the book; which it was I don't know.

Mr. JAMES. Did you speak up at that time and say anything at all?

Mr. PARKS. Make any reply? No, sir; I think not.

Mr. JAMES. You would have remembered, do you think, if you had?

Mr. PARKS. Yes, sir; I think I would, for the reason that I had explained to Mr. Christensen why I did not search that box, that I considered it Glavis's personal stuff, and I did not have any right in it. If I had made a thorough search of the box I might have expressed some surprise for my overlooking anything of that sort. I had not looked for those letters.

Mr. JAMES. If you had made that statement to Mr. Christensen, that you had not searched this box, what was the necessity for him to state to you and to those in the office there: "You surely did not search very well?"

Mr. PARKS. Just for the fact that there had been a search made in the office and around for records and things, and we had not been able to find them.

Mr. JAMES. You were the only one that had been looking into this box, had you not?

Mr. PARKS. So far as I know; yes, sir.

Mr. JAMES. You understood that that statement was more directed to you than to anybody else, did you not?

Mr. PARKS. No, sir; that was not my impression, and it is not my impression at this time.

Mr. JAMES. It is not your impression at this time?

Mr. PARKS. No, sir.

Mr. JAMES. And just before this you explained to him that you yourself, had gone up there but had not looked into this box because you were told the personal property of Mr. Glavis was in the box, and nothing more?

Mr. PARKS. I looked into the box and satisfied myself that it was his personal property. I thought I had no right to go into it without further authority.

Mr. JAMES. And when he came into the room he greeted you with the statement, "You surely did not search very well."

Mr. PARKS. He said, "I guess we did not make a very good search."

Mr. JAMES. He said, "I guess we did not make a very good search?"

Mr. PARKS. Yes; just in a jocular manner.

Senator PURCELL. I did not catch your last question. As I understand you, you had not gone up there for the purpose of looking for these letters at all?

Mr. PARKS. No, sir. I had no idea of looking for the letters.

Senator PURCELL. So that you never made a search for those letters?

Mr. PARKS. No, sir.

Senator PURCELL. Why was it that this man stated to you that you had not looked very well?

Mr. PARKS. I did not understand he was addressing that to me at all.

Senator PURCELL. You had never looked for the letters, you say?

Mr. PARKS. No, sir.

Senator PURCELL. And never made a search for them?

Mr. PARKS. No, sir.

Senator PURCELL. And yet he comes into the office with letters in his hand, and said you had not made a very good search for them?

Mr. PARKS. I do not think he did address that to me.

Mr. OLMSTED. Didn't you search for the letters, and make a notation on the bottom of the memorandum there, and say you could not find them?

Mr. PARKS. I don't know whether they were the letters or not.

Mr. JAMES. You knew that Mr. Christensen had just come from upstairs, searching in this box?

Mr. PARKS. I did not know of my own knowledge where he had been.

Mr. JAMES. Why didn't you ask him?

Mr. PARKS. Well, he was my superior and I did not consider I had any right to do that.

Mr. JAMES. He was challenging you with the statement that you had not searched well.

Mr. PARKS. I did not consider he was challenging me. I stated to him before I went up there that I had not searched that box. If I had made a search of the box, I would have considered that he was challenging my work, or something of that sort, and might have replied. I was busy making a report on the typewriter.

Mr. BRANDEIS. What did Mr. Christensen say to you as to where he had found those papers?

Mr. VERTREES. Mr. Brandeis, here is a copy of that affidavit. Look at the date of it, there at the bottom.

Mr. PARKS (after looking at the affidavit). I think that is correct—February 19. That is one that I referred to when I said I thought I had made another.

Mr. VERTREES. I wish you would state the date there to the committee.

Mr. BRANDEIS. This is a copy of an affidavit, no signatures on it, but it is dated the 19th of February, 1910.

Now, what did Mr. Christensen say to you as to where and how he had found these papers?

Mr. PARKS. The first thing I recall he said was when he brought a pile of books and laid them on my desk and said he wished I would assist him in making a list of the things he had found there.

Mr. BRANDEIS. How long was that after he came in and made that remark—"I do not think you have searched very well?"

Mr. PARKS. I do not recall just the time he entered the office. This was just before noon when he put those things on my desk.

Mr. BRANDEIS. How long a time had elapsed between his first coming in with Mr. O'Neill?

Mr. PARKS. It might have been an hour; I am not certain as to that; I did not look at the time—something like that.

Mr. BRANDEIS. Mr. Chairman, there was one question which I omitted to ask Miss Shartell.

The CHAIRMAN. I do not know whether she is here or not.

Mr. BRANDEIS. I saw her just come in. I would like to suspend the examination of Mr. Parks for just one minute.

The CHAIRMAN. You may examine her.

(The witness was thereupon temporarily excused.)

Mr. BRANDEIS. Will you be kind enough to take the stand, Miss Shartell?

The CHAIRMAN. She may stand right there and answer the question from there.

TESTIMONY OF MISS ELLA M. SHARTELL—Resumed.

Mr. BRANDEIS. Miss Shartell, you spoke of having made a search yourself of certain files, and of not having searched either Mr. Sheridan's desk or Mr. Christensen's desk or drawers?

Miss SHARTELL. Yes.

Mr. BRANDEIS. Did you search the desks or drawers of any other persons who had desks in the room or places where they put papers?

Miss SHARTELL. I did not, myself.

Mr. BRANDEIS. Well, did anyone else make such a search?

Miss SHARTELL. I believe they were looked through by Mr. Christensen one day; he looked around through the drawers.

Mr. BRANDEIS. That is, he searched through the desks or drawers where other persons, other agents, like Mr. Parks and others, kept their papers?

Miss SHARTELL. Yes, sir.

Mr. BRANDEIS. And was that done in the presence of the occupants of those various desks?

Miss SHARTELL. Some of them were there.

Mr. BRANDEIS. Who were there, as you recall?

Miss SHARTELL. I do not remember who they were.

Mr. BRANDEIS. Well, do you remember who was not there when Mr. Christensen went through their desks or drawers?

Miss SHARTELL. No; I do not.

Mr. BRANDEIS. About what time was that?

Miss SHARTELL. That was the time they were searching for the papers and when Mr. Sheridan was there.

Mr. BRANDEIS. That is in the autumn—say in November, 1909?

Miss SHARTELL. Yes, sir.

Mr. BRANDEIS. Do you remember what time of the day that search was made by Mr. Christensen?

Miss SHARTELL. No.

Mr. BRANDEIS. Had it been customary in the office, while Mr. Glavis was at its head, for the chief to go through the desks of the others in the office?

Miss SHARTELL. Why, when he wanted anything that would be in their desks he would go to them. They were always unlocked, and anything that he wanted at the time he would go and take.

Mr. BRANDEIS. The desks were open so that anybody could go to the desks?

Miss SHARTELL. Anybody could go.

Mr. BRANDEIS. When Mr. Christensen went to these desks, how much of a search did he make, so far as you know; perhaps you can not tell definitely on that?

Miss SHARTELL. I can not tell definitely, but he looked through them to see if there was anything there that he was looking for.

Mr. BRANDEIS. That is all, Miss Shartell.

Mr. McCALL. Mr. Chairman, I would like to ask Miss Shartell a question before she is excused.

The CHAIRMAN. Certainly.

Mr. McCALL. Miss Shartell, in this letter that you have read from Glavis, the first sentence, as I remember it, said something about your putting this letter on file and destroying the other letter?

Miss SHARTELL. Yes.

Mr. McCALL. Can you tell me about that? Did he send you two letters?

Miss SHARTELL. Yes. He sent me one from Spokane the night he was leaving for the East.

Mr. McCALL. What did you do with that letter?

Miss SHARTELL. I destroyed that.

Mr. McCALL. Do you remember anything particular that was in that letter?

Miss SHARTELL. Yes. He had told me that he was starting for the East that night, and that he did not want anyone to know of his whereabouts while he was away except myself, and for me not to let anyone see that letter, so that they would not know where he was.

Mr. BRANDEIS. That was when he went to Spokane on his way to see the President, as it afterwards proved to be the President that he went to see?

Miss SHARTELL. He had been in Spokane for two or three days expecting to return to Seattle before he left for the East, and he sent the letter saying that he would not be back to Seattle, but would leave for the East that night.

Mr. BRANDEIS. And that was the letter in which he stated that he did not want anybody to know where he was?

Miss SHARTELL. Yes.

Mr. BRANDEIS. And that was the trip which you understood was the trip to the President at Beverly?

Miss SHARTELL. Yes.

Senator SUTHERLAND. Have you stated all that was in that letter?

Miss SHARTELL. Well, there was another matter that was not just about the office affairs.

Senator SUTHERLAND. Did he say anything in that letter as to what you should say if he was inquired for—if anybody inquired for him, did he tell you what to say?

Miss SHARTELL. No; I do not think he did. I told anyone that the last I had heard from him he was in Spokane.

The CHAIRMAN. That is all.

(The witness was thereupon excused.)

TESTIMONY OF GEORGE A. PARKS—Resumed.

Mr. BRANDEIS. Now, Mr. Reporter, I will ask you to read the last question I put to Mr. Parks.

(The reporter read the question as follows:)

How long a time had elapsed between his first coming in with Mr. O'Neill?

Mr. BRANDEIS. And his coming to you and his laying the papers down on your desk?

Mr. PARKS. I can not state positively; probably an hour.

Mr. BRANDEIS. Well, now, when he first came in with Mr. O'Neill, did he say to you, or to anyone else in your presence, as to where and how he found those papers?

Mr. PARKS. Not that I recall. No, sir; I didn't pay any attention to what he said.

Mr. BRANDEIS. Who else was present beside yourself and Miss Shartell?

Mr. PARKS. Well, there were a number of other agents there; I could not state exactly. Their daily reports will show who were in the office and who were not.

Mr. BRANDEIS. You do not recall who else was there at that time?

Mr. PARKS. No, sir; not with any degree of accuracy.

Mr. BRANDEIS. Well, now, when he came to you and asked you, and laid down certain papers on your desk, and asked you to assist him in making a list, did he then say anything as to where or how he found the papers?

Mr. PARKS. Yes, he told me to list those and head the list that they were government property found in one of the barrels in the assistant custodian's room of the Federal Building, Seattle. That is the substance of what he said.

Mr. BRANDEIS. That barrel was a barrel that you had not examined?

Mr. PARKS. No, sir.

Mr. BRANDEIS. It was one of the barrels which I understood you to say was closed?

Mr. PARKS. Yes; those barrels were closed.

Mr. BRANDEIS. They were not open like the box?

Mr. PARKS. No, sir; I do not know whether he got them out of the barrels up there or not.

Mr. BRANDEIS. The things he brought to you he said he had gotten out of the barrel?

Mr. PARKS. Yes, sir.

Mr. BRANDEIS. And those articles were not these missing letters which have been referred to?

Mr. PARKS. No, sir.

Mr. BRANDEIS. Did he say anything to you then as to where he had found the missing letters?

Mr. PARKS. I do not recall that he mentioned the missing letters, to me; I knew nothing of them, and he would have had no object in telling me.

Mr. BRANDEIS. Did he at any time subsequently tell you where he had found the missing letters?

Mr. PARKS. Yes, sir; he told me where he had found the missing letters. He mentioned the fact that he had found the letters and papers—

Mr. BRANDEIS. Did he tell you where?

Mr. PARKS. In a box upstairs.

Mr. BRANDEIS. And did he tell you where in the box?

Mr. PARKS. It seems to me he said he found them under the dictionary or somewhere—I am not certain on that point.

Mr. BRANDEIS. That is, lying under the dictionary, or in the dictionary?

Mr. PARKS. Underneath.

Mr. BRANDEIS. Underneath the dictionary?

Mr. PARKS. Yes, sir.

Mr. BRANDEIS. And where was this dictionary, with reference to the other articles in the box?

Mr. PARKS. Well, there was one dictionary on top, or very near the surface, that I saw when I was mussing that sleeping bag around.

Mr. BRANDEIS. You do not know whether that is the one he referred to, or some other one?

Mr. PARKS. No, sir; I have no way of knowing that.

Mr. BRANDEIS. Is that the only thing that he told you that you can recall as to the exact circumstances under which he found those papers?

Mr. PARKS. Yes, sir.

Mr. BRANDEIS. That is all?

Mr. PARKS. That is all.

Mr. BRANDEIS. And when was this statement made?

Mr. PARKS. Well, I do not know; some time after this search; I could not be certain as to the time it was.

Senator PURCELL. What kind of a dictionary was that?

Mr. PARKS. I do not know. The reason I thought it was a dictionary—I did not examine the title of it even—

Senator PURCELL. It was a large book, was it?

Mr. PARKS. It was a large book with a yellow cover.

Senator PURCELL. And laid on top of the box?

Mr. PARKS. Laid inside of the box.

Senator PURCELL. The box was open and a board off?

Mr. PARKS. We opened the box.

Senator PURCELL. You say there was a board loose?

Mr. PARKS. Yes, sir; a board loose.

Mr. BRANDEIS. It was only half full?

Mr. PARKS. About half full; yes.

Mr. BRANDEIS. This affidavit I will introduce in evidence now.

The CHAIRMAN. It is admitted.

(The affidavit is as follows:)

AFFIDAVIT.

STATE OF WASHINGTON, *County of King*, ss:

I, Geo. A. Parks, being duly sworn on oath, depose and say:

That I am now and have been since the 15th day of July, 1909, an employee of the General Land Office and connected with the 17th field division, with headquarters in Seattle, Washington. That during the first week in February, 1910, I assisted Miss Ella Shartell, clerk in the office of the 17th field division, in making a search of the files of this office for certain papers and records which were requested by the joint congressional committee, now conducting an investigation in Washington, D. C. That on February 2, 1910, we made a thorough and complete search of the office files and failed to find any of the letters or records requested. I then visited the office of the United States district attorney, and made an examination of the papers in his office relating to the Alaska coal cases, the same being a part of the records of the 17th field division office, thinking that perhaps some of these papers might be on file with those records, but discovered none of the missing papers. That on the afternoon of February 2, 1910, a telegram was received in this office from the General Land Office, requesting this office to forward the daily reports of Special Agent Bowman for July to November inclusive, year not given. That having looked through the files in the office previous to the receipt of this telegram, and not remembering having seen any such records as those requested in said telegram, I endeavored to recall to mind any recollection of the disposition of any office records which had come to my notice during my assignment in the Seattle office. When I first reported to this office, there were two rooms assigned to the use of the field division, the chief of field division occupied one of these rooms, the other being used by the agents. These offices were consolidated a little later and a number of papers, books, and miscellaneous articles were placed in boxes and carried into the present quarters. These boxes were placed under one of the tables in the office and remained there for a long time. I recalled these boxes for the reason that some of my note books and copies of reports were lost, and I found them in one of these boxes, where they were stored when the offices were consolidated. When I remembered the circumstances in connection with the loss of my note books it occurred to me that if the above-mentioned boxes could be located the missing records might be found. I then interviewed Mr. O'Neal, assistant custodian of the federal building, and requested that I be shown through all of the rooms in the building where there was any chance that these boxes might be stored. I first visited the room used by the grand jury when in session. There were no papers or boxes of any kind in this room. I next visited the room used as a storeroom by the customs service. In this room were two boxes addressed to L. R. Glavis; one of them contained an empty bookcase, and I was informed that the other contained a music box. I then examined the room used as a general storeroom by the custodian. In this room there were a number of articles addressed to L. R. Glavis, one a large box which had been opened and some of the contents removed. Two large bearskin rugs were lying on the table by the box. These had evidently been taken out and placed on the table to prevent their destruction by moths. There was one of the top boards of the box entirely loose and another only slightly fastened, so that it came off easily. I did not disturb the contents of this box further than to move a few of the books which were piled in one end and examine the articles on top. I noticed a fur sleeping bag and what was apparently a small tent; also several books, among them a large dictionary. I made only a casual examination of the contents of this box, only looking at the articles that were visible, but if there were any official papers in the box they must have been underneath the other articles or I should have seen them. I did not think that I had any authority to make a search of any of the barrels or of the box at this time, as they were represented to me as being the private property of Mr. Glavis. In addition to the box mentioned above there were several barrels covered with burlap and marked "L. R. Glavis." I did not disturb these at all. There was also a large box marked "L. R. Glavis." This contained some kind of a picture and stood in the special agents' room for a long time. I did not find any of the records that had been requested, and so reported to the chief of field division. On Tuesday, the eighth day of February, 1910, Mr. Christensen, chief of field division, came to Seattle from Portland, Oregon. I told him of my search, and explained to him about the box and the barrels in the storeroom and told him that I did not search

these things, as they were the private property of Mr. Glavis, and I did not think that I had any authority to open or search them. At the same time I told him about the box being open and what I had found on the table near the box, and of the articles visible in the box. During this conversation it was suggested that a further examination be made, which I am informed Mr. Christensen and Mr. O'Neal did a short time later. As far as I know, the first knowledge that Mr. Christensen had of the boxes and barrels, belonging to Mr. Glavis, being stored in the federal building was when I mentioned the fact that such articles were stored in said building in the course of our conversation on February 8, 1910. It was not generally known in the office that any such articles were in the building.

That I assisted in making a list of government property, said to have been found in the above-mentioned box and barrels by Mr. Christensen and Mr. O'Neal, on February 8, 1910.

And further affiant saith not.

Subscribed and sworn to before me this 19th day of February, 1910, at Seattle, Washington.

Special Agent, G. L. O.

Mr. BRANDEIS. That is all at present, Mr. Chairman.

Senator FLETCHER. You did not see any typewriting paper or typewriting material in the box, did you?

Mr. PARKS. No, sir.

Senator FLETCHER. If the typewritten letters were in the box, they must have been underneath the books and the other things in the box which you did not remove?

Mr. PARKS. Yes, sir; they must have been underneath the stuff on top. All I did was just put my hand in there and push that sleeping bag around.

Senator PURCELL. Did you see these 24 missing letters when he brought them in?

Mr. PARKS. No, sir; I have never seen them.

Senator PURCELL. He did not show them to you?

Mr. PARKS. No, sir.

Senator PURCELL. Did you ever see them?

Mr. PARKS. No, sir; I have never seen them.

The CHAIRMAN. Do I understand, Mr. Brandeis, you want this witness to remain?

Mr. BRANDEIS. Yes.

The CHAIRMAN. Very well.

The witness was thereupon excused.

Mr. VERTREES. We will call Mr. O'Neill.

TESTIMONY OF GARRETT W. O'NEILL.

Garrett W. O'Neill having been first duly sworn by the chairman testified as follows:

Mr. VERTREES. I wish before beginning, if it is possible, I would like that there be some extension of time this afternoon to enable Mr. O'Neill to return. His circumstances, as he describes them to me, are such that he is almost obliged to be at home.

Mr. BRANDEIS. I am certain that I shall desire Mr. O'Neill retained here until after all the evidence in regard to these missing papers is in.

The CHAIRMAN. You want him to remain here?

Mr. BRANDEIS. Yes, sir; so that an extension of time this afternoon would not result in our being able to relieve Mr. O'Neill.

Mr. VERTREES. State your name, please.

Mr. O'NEILL. Garrett W. O'Neill.

Mr. VERTREES. Where do you live, Mr. O'Neill?

Mr. O'NEILL. Seattle.

Mr. VERTREES. Do you hold any position under the Government of any kind?

Mr. O'NEILL. Assistant custodian of the Federal building, Seattle.

Mr. VERTREES. How long have you been assistant custodian?

Senator PURCELL. Speak up so this gentleman here can hear you [indicating the chairman].

Mr. O'NEILL. Since October, 1908.

Mr. VERTREES. You are acquainted with Mr. L. R. Glavis?

Mr. O'NEILL. Yes, sir.

Mr. VERTREES. Are you acquainted with Mr. Parks, the gentleman who has just deposed?

Mr. O'NEILL. Yes, sir.

Mr. VERTREES. And with Miss Shartell?

Mr. O'NEILL. Yes, sir.

Mr. VERTREES. Are you acquainted with Mr. Christensen?

Mr. O'NEILL. Yes, sir.

Mr. VERTREES. Mr. Christensen succeeded Mr. Glavis.

Mr. O'NEILL. So I have been informed. I will state here that I am a Treasury official and I am not able to answer questions pertaining to the Land Department that you might ask pertaining to those things.

Mr. VERTREES. As assistant custodian in the federal building, what are your duties?

Mr. O'NEILL. I have charge of the building and of the employees, and all pertaining to the building.

Mr. VERTREES. How many stories has it?

Mr. O'NEILL. Four stories and a basement.

Mr. VERTREES. On what floor is the office of Mr. Glavis, occupied by Mr. Christensen and his force?

Mr. O'NEILL. That is on the second floor.

Mr. VERTREES. You have heard it said here that there are certain properties of Mr. Glavis's in the building, a box in which certain papers were found?

Mr. O'NEILL. Yes, sir.

Mr. VERTREES. And a barrel?

Mr. O'NEILL. Yes, sir.

Mr. VERTREES. On what floor is that room in which they were found?

Mr. O'NEILL. What floor?

Mr. VERTREES. Yes.

Mr. O'NEILL. On the fourth floor.

Mr. VERTREES. You heard Mr. Parks testify? You were sitting here.

Mr. O'NEILL. Yes, sir.

Mr. VERTREES. Had you made any search for any documents or papers for the officers of the Land Office prior to the one you made with Mr. Parks recently?

Mr. O'NEILL. No, sir; I never had.

The CHAIRMAN. Mr. Vertrees, will you let me ask a question before you go on?

Mr. VERTREES. Yes, sir.

The CHAIRMAN. Do you know when this box that they have referred to here was put into that room, and by whom?

Mr. O'NEILL. I do. When Mr. Glavis first came to the building, along about April, or some time about that time.

The CHAIRMAN. What year was that?

Mr. O'NEILL. 1908.

Mr. BRANDEIS. 1908 or 1909?

Mr. O'NEILL. 1909, yes; thank you. He came to my office one morning and asked if there would be a chance to get into the building. Our building is very much crowded there. All the offices were assigned, and I told him I could not say, but I would see what could be done. He said it would be a very great kindness to him and it would save the Government at least \$100 a month. He said that he had looked at suites of rooms in the city and could not get anything that would suit him at less than that. I told him I would do the best I could. I showed him over these rooms, 217 and 219, that were at that time assigned to the customs officials, and was all one room and is yet. I told him that it was possible that these rooms could be gotten for his department if he should have his department here in Washington take the matter up with the Treasury officials, which he did. A letter was forwarded to me requesting me to explain the situation, and I recommended that the rooms be assigned to him at that time.

The CHAIRMAN. You are referring to the office rooms and I am referring to this room where this box was found.

Mr. O'NEILL. That is the storeroom.

The CHAIRMAN. Yes, that is the room I referred to.

Mr. O'NEILL. When Mr. Glavis came to the building he brought some of his things. I did not know at the time that he had brought any personal things into the building, but I had seen boxes, barrels, and things of that kind in the main corridor in the basement marked with his name. Some time along in the summer, I can not remember the date, Mr. Glavis came to me and asked me to give him the key to the grand jury room, which is on the fourth floor. I have brought a diagram of the fourth floor here that you may have a better idea as to how the building is arranged. He wanted the key to the grand jury room, and he said he had some things he wanted to put in there.

I did not know whether it was his property or whether it was government property. I told him that I did not think I had any authority to let him use the grand jury room, it being assigned to the judiciary department. He informed me he had seen the marshal and that the marshal had given him permission, providing I was willing.

Of course I consented, and the next thing I learned his things were moved to the grand jury room. This box which is now in the adjoining room and two barrels, one of them in the room also. Then those things were there strewn around the floor during the summer, for the grand jury room was vacant. Along in the fall, or the first part of the fall, Mr. Kennedy came to me and said that Mr. Glavis had asked him if I would give him some place to put his personal things, until he could find out what he wanted to do with them. I told him I would certainly do what I could to accommodate him. I was very anxious to—I was sorry that Mr. Glavis had been removed, and I was anxious to accommodate him, and I would do what I could. I told him I would let him know in a few days. I saw there was no

place in the building except this storeroom, which was entirely under my own supervision, and I told Mr. Kennedy. I went to the room and I said, "All right, Mr. Kennedy, you can put those things there in my private storeroom." I went over—

The CHAIRMAN. About what time was that?

Mr. O'NEILL. That was, as near as I can remember, that was along about the 20th, or somewhere between the 20th and the 25th of September, as near as I can remember now. And Mr. Kennedy went into the grand jury room. I went in with him—I opened the door—I went in with him. These papers and things were strewn around the floor. Those rugs which have been referred to, one of them was on the table and the other one was on the floor, with moth balls to protect them; and there were a number of things. I said to Mr. Kennedy, "Does all of this stuff belong to Mr. Glavis?" and he said, "I don't know whether it is his own property or whether some of it belongs to the boys in the field." I said, "All right, I will arrange, when you get it all fixed up, to have the janitor move it over for you."

Mr. JAMES. That is the room now where he was saving the Government a hundred dollars a month?

Mr. O'NEILL. Oh, no; that was downstairs.

Mr. MADISON. I don't think anyone ought to interrupt this witness.

The CHAIRMAN. I have no more questions. I have turned this witness over. I want to know about how this room was taken possession of?

Mr. O'NEILL. Which room do you refer to, Mr. Chairman?

The CHAIRMAN. That room you have referred to.

Mr. O'NEILL. I am telling you how he came to have his things in the grand-jury room.

Mr. JAMES. I think the chairman's question was—

Mr. MADISON. He was telling his story with preciseness.

Senator PURCELL. You are mistaken, Mr. James, the witness is right.

Mr. JAMES. I beg the witness's pardon. Go ahead.

Mr. O'NEILL. Mr. Nelson said he did not wish to know how they came into the building; he wished to know how they came to have their effects in the grand-jury room.

Mr. JAMES. I see you were answering directly. Now, go ahead.

The CHAIRMAN. Now, go ahead, Mr. Vertrees.

Mr. VERTREES. You and Andrew Kennedy were in the room?

Mr. O'NEILL. Yes, sir. When Mr. Kennedy got these things all up together in the boxes the janitor moved them over and placed them in the corner of room 405, which, as has been stated, is my storeroom for furniture and supplies; furniture that is not being used in the building.

Senator PURCELL. By the way, are you a married man?

Mr. O'NEILL. I am.

Senator PURCELL. I was wondering why you kept your furniture in the building there.

Mr. O'NEILL. That is furniture for the office building.

Senator PURCELL. It is a private room. Go ahead; I am sorry I interrupted you.

Mr. O'NEILL. These barrels and that box were transferred from the grand-jury room, which is No. 420, over the room 405, and have

remained there since, expecting that Mr. Glavis would at any time send for them.

Mr. OLMSTED. Does that room there show on the diagram you have there?

Mr. O'NEILL. That room, yes, sir.

Mr. MADISON. Indicate it for Mr. Olmsted.

Senator PURCELL. Put your finger on it.

Mr. GRAHAM. Show him the furniture in it.

Mr. O'NEILL. You can not see the furniture, but the rooms are all marked plainly.

Mr. VERTREES. Well now, Mr. O'Neill, this box; I ask you specially about that now, was moved from the grand-jury room to your room, and what room do you call that?

Mr. O'NEILL. Room 405.

Mr. VERTREES. That is a sort of storeroom?

Mr. O'NEILL. That is a storeroom.

Mr. VERTREES. And there it was at the time you and Mr. Parks went up there to see it?

Mr. O'NEILL. Yes, sir.

Mr. VERTREES. And how came you and Mr. Parks to go up there, do you remember?

Mr. O'NEILL. Yes, sir; Mr. Parks came into my office and said that he had been instructed to find some data, or papers, or something, belonging to his office, and that he understood there were some boxes in the grand-jury room. I told him there were no boxes in the grand-jury room, but I said, "I will show you where they are." He said, "Among Mr. Glavis's things." I said "I will show you the grand-jury room, there is nothing in it. I will show you everywhere where there is anything pertaining to Mr. Glavis in the building now." We went to the grand-jury room and he saw there was nothing there except the chairs and table, and I took him to room 410, the custom-house storage or fireroom, in which there are two boxes, one a music box and the other I afterwards found out was a box of records for the music box. They were in the basement, and when the post-office authorities wanted to put some old records out in the basement, I told the janitor very much more recently than this to transfer and take these boxes up and put them in 410.

Mr. JAMES. Did he do that?

Mr. O'NEILL. Yes; he took them there, and that is where these boxes are. Then I took Mr. Parks to the storeroom 405, and he went over to these boxes. We lifted up this board—it wasn't nailed at all—and the other one was just lying on top with the nails down in the holes where they had been previously drawn from. He says, "This looks like his personal effects," and I said, "I understand it is." I said, "It is up to you to see what is there." He said, "If it is only his personal effects, I do not feel that I ought to go through it." I said that I didn't know anything about it, that Mr. Kennedy had asked to have them stored, and they were put there as his personal effects; and Mr. Parks just barely looked into the box and said he didn't wish to go through it. I said, "All right," and we left the room.

Mr. VERTREES. And is it that box that is in the adjoining room here now?

Mr. O'NEILL. Yes, sir.

Mr. VERTREES. And Mr. Glavis got permission first to put it in the grand-jury room—to put his things in there. Did he get a key to the grand-jury room?

Mr. O'NEILL. Yes, sir; Mr. Glavis got the key to the room.

Mr. VERTREES. Have you any way of showing when he got that key?

Mr. O'NEILL. No, sir; it was assigned on a temporary permit, similar to others which are in this book, and when Mr. Kennedy brought back the key to me the permit was destroyed.

Mr. VERTREES. Mr. Andrew Kennedy brought back the key to you?

Mr. O'NEILL. Yes, sir.

Mr. VERTREES. Do you recollect about when that was, or have you any way of stating?

Mr. O'NEILL. It was between the 23d and 25th of September, last year.

Mr. VERTREES. How long before that was it that Mr. Kennedy had come to you about the boxes, about moving them?

Mr. O'NEILL. Oh, it was not very long, not very long—you mean when these boxes were moved?

Mr. VERTREES. Yes.

Mr. O'NEILL. When Kennedy went in to put all the things together?

Mr. VERTREES. That is the time I speak of when Kennedy went in to put the things together.

Mr. O'NEILL. He didn't have the key at that time, for I opened the door myself.

Mr. VERTREES. He didn't have the key?

Mr. O'NEILL. No, sir; he had returned the key about two days, or a day, something like that, before that.

Mr. VERTREES. He put the sleeping bag in, did he?

Mr. O'NEILL. He put everything that was in the box, so far as I know. I didn't remain in the room; after I let Mr. Kennedy in I went out.

Mr. VERTREES. You went out and so you do not know what he did?

Mr. O'NEILL. No, sir; I did not remain.

Mr. VERTREES. You did not remain; you went out?

Mr. O'NEILL. Yes, sir.

Mr. VERTREES. You do not know what he did in there?

Mr. O'NEILL. No, sir.

Mr. VERTREES. Well, what next do you know now? You left, as you have stated, I suppose, without looking at it?

Mr. O'NEILL. Yes, sir.

Mr. VERTREES. Did you or Mr. Parks go into that box at all?

Mr. O'NEILL. No, sir.

Mr. VERTREES. Did either of you put anything in it?

Mr. O'NEILL. No, sir.

Mr. VERTREES. Did you make any examination of it?

Mr. O'NEILL. No, sir.

Mr. VERTREES. And Mr. Parks made the casual examination of it you have mentioned?

Mr. O'NEILL. Yes, sir.

Mr. VERTREES. Did you carry the key to that room?

Mr. O'NEILL. I carried one key.

Mr. VERTREES. What I mean by carrying it, was the room kept locked?

Mr. O'NEILL. Yes, sir; always locked.

Mr. VERTREES. You kept the key?

Mr. O'NEILL. I think the other keys were in the key cabinet. Nobody had any access to the room except one of the janitors, and he never went there unless I asked him to go.

Mr. VERTREES. Well, now, when next did you have anything to do with the box?

Mr. O'NEILL. About a week later Mr. Christensen came to me and said that Mr. Parks had been to you to hunt for some papers and things, but he said I have received a telegram, and I want to be able to answer definitely that I have made this search, and I would like to go through the grand jury rooms and these rooms where Mr. Parks stated that he hunted. I said all right. And I went with him and showed him over the same ground, but at that time we opened the box in 410, which contained these brass records for the music box. Then we went on to room 405. When he saw these boxes Mr. Christensen said, we will have to go through these things and make a hurried search. He pulled off his coat and began to pull out the things, and I helped him. I pulled out this tent and a sleeping bag and a dictionary and some large books that were about as large as this book and a little longer—

Mr. VERTREES. What sort of books were they?

Mr. O'NEILL. They were books of fiction or history, I do not recall just now.

Mr. VERTREES. Well, go ahead.

Mr. O'NEILL. When he stooped down and took the first bunch of papers that he lifted out—

Mr. VERTREES. Had he taken the dictionary out then?

Mr. O'NEILL. I had taken the dictionary out then and these books.

Mr. VERTREES. Wait a moment; what was the first thing on top?

Mr. O'NEILL. The sleeping bag and the tent was on top, then all these books—

Mr. VERTREES. Then under them was what?

Mr. O'NEILL. Under the books?

Mr. VERTREES. No; under the tent and the sleeping bag.

Mr. O'NEILL. Under that were the books—the dictionary and these other large books.

Mr. VERTREES. Who took the dictionary out?

Mr. O'NEILL. I took the dictionary out.

Mr. VERTREES. Then what?

Mr. O'NEILL. He lifted out some of those books, and when he had all of those books then Mr. Christensen was the first to take up these papers, and as he took them up in his hands he picked up three papers, and he said to me, he said: "My God, here are those papers we have hunted all over for." I said, "What papers?" He said, "Don't you know those papers in regard to that investigation?" Even then I hadn't known anything about those papers, because I was paying no attention. He said, "Those papers, the copies of which appeared in Collier's." Then I was interested at once. I said, "Let's see." I took the papers, and he said, "Here is the original—a typewritten copy—and a carbon." I said, "Then I am up against it. I am going to be drawn into this proposition." I said, "You had better let me take those papers," and he said, "All right." So I took the original papers written in ink, and I looked over the names, and then

he suggested that we had better see Mr. Todd, Mr. Elmer E. Todd, the attorney.

Mr. VERTREES. He was the district attorney there, wasn't he?

Mr. O'NEILL. Yes, sir; he was the district attorney, and he was down on the next floor. I said, "Now, you have got off your coat and I will go down and get Mr. Todd." I laid those letters on the table and stepped down and got Mr. Todd and he came up and I handed the letters to Mr. Todd, and Mr. Todd sat down on a chair and looked them over. He said, "Now, we do not want to let the newspapers get hold of this until these papers are returned to the committee in Washington." So it was decided that the three of us should not mention the finding of the papers until they were returned.

Mr. VERTREES. Do you recollect when this was, Mr. O'Neill.

Mr. O'NEILL. Well, it was in February. It was about a week after Mr. Parks came to visit me. It was somewhere along about the 7th or 8th of February, to the best of my knowledge.

Mr. VERTREES. You all agreed you would not let the papers get hold of it, but you would keep quiet on the subject.

Mr. O'NEILL. Yes, sir.

Mr. VERTREES. Who were you that agreed to that?

Mr. O'NEILL. Mr. Christensen, Mr. Todd, and myself.

Mr. VERTREES. What papers were they that you are talking about?

Mr. O'NEILL. They were these letters. I took a copy of them then, or rather when I went downstairs, because I knew when Mr. Christensen said that they were the papers that were of such importance in this case that they had been hunting for, I wanted to be sure that I could identify them. So I took the originals and carried them in my hands and went downstairs—I had better tell you this first. After we found those and had them down and Mr. Todd looked them over, he left, and we went all through this box and found a great quantity of other matters that Mr. Christensen said pertained to his office. Then he said he would have to go through the rest of these barrels and these boxes; I refer to it as a box; it is not really a box; it is a picture in a case. So we went through another one of the barrels, and in one of the barrels we found some more of this land-office paraphernalia, which Mr. Christensen took charge of, but in the others we found nothing but books pertaining to Mr. Glavis. Then we opened up this frame, this box in which we found a picture, and after that we left things just as they were and went downstairs and made copies. I made a copy of the names of the persons who sent the letters and to whom sent.

Mr. VERTREES. You have got that with you?

Mr. O'NEILL. Yes, sir.

Mr. VERTREES. Where were you when you made that?

Mr. O'NEILL. I was in room 217, which is Mr. Christensen's office.

Mr. VERTREES. And made it at that time?

Mr. O'NEILL. Made it before I let the letters out of my hand.

Mr. VERTREES. I do not see any date on this memorandum.

Mr. O'NEILL. The date of the taking of it?

Mr. VERTREES. The date when you took it.

Mr. O'NEILL. I did not date it.

Mr. VERTREES. I will put that memorandum in evidence, Mr. Chairman.

The CHAIRMAN. It is admitted.

(The memorandum is as follows:)

Clarence Cunningham to R. & Receiver, Jan. 15, 1908.

Clarence Cunningham to Mr. J. W. Dudley, May 9, 1908.

" " " " " Mar. 10, 1908.

" " " Register & Receiver, Juneau, Alas., Mar. 19, 1908.

" " " Mr. P. M. Mullen, Juneau, Apr. 13, '08.

" " " Register & Receiver, " Mar. 14, '08.

Wm. Sulzer to Register, Gen. Land Office, Juneau, May 23, '08.

A. H. Wheatley Seward to Hon. P. M. Mullen, " Jan. 4, 1907.

" " " " " Dec. 30, 1907.

(F. Watson) in pencil to Register & Receiver, Land Office, Juneau, Apr. 3, '08.

H. R. Harriman to Hon. John W. Dudley, Juneau, Mar. 12, '08.

Arthur D. Jones " Mr. P. M. Mullen, Juneau, Jan. 7, '08.

" " " & Co. to " " " " " 11, '08.

(Signal Corps.)

Clarence Cunningham to Register & Receiver Land O., Juneau, Jan. 8, '08.

James D. Finch to Register U. S. Land Office, " June 3, '08.

Clarence Cunningham to Mr. P. M. Mullen, Juneau, Dec. 11, '07.

Wriwen S. Yearsley " Register Land Office, Juneau, Alas., Dec. 23, '07.

Clarence Cunningham " " & Receiver, U. S. Land Office, Juneau, Sept. 26, '07.

Thos. Payne to Hon. J. W. Dudley, Reg. U. S. Land Office, Juneau, Aug. 3, '07.

Wendell McLaughlin to Recorder U. S. Land Office, Juneau, Dec. 31, '06.

M. A. Green to Hon. John W. Dudley, Juneau, Alas., Jan. 7, '09.

" " " " " Apr. 23, '09.

Walter M. French to " " " " " 19, '09.

R. A. Ballinger to Register & Receiver U. S. Land Office, Juneau, Dec. 23, '08.

(Signed) Fred Dennett to Hon. R. A. Ballinger, Seattle, Dec. 17, 1908.

Mr. VERTREES. Well, what did you do with the papers then?

Mr. O'NEILL. I left them in the office and went away to my own office.

Mr. VERTREES. Do you know anything about them since?

Mr. O'NEILL. No, sir; I do not.

Mr. VERTREES. You have made mention of the fact that parts of these letters that you found there had appeared in Collier's.

Mr. O'NEILL. Yes, sir.

Mr. VERTREES. Do you recollect when they appeared in Collier's?

Mr. O'NEILL. I never saw a Collier's with them in it, but Mr. Christensen—that is what made me so interested in the letters, when he said they were the letters that had appeared in Collier's. I saw in the daily press that such letters had appeared.

Mr. VERTREES. Have you any knowledge of any other matter or fact in regard to the finding of those papers?

Mr. O'NEILL. No; not that I can recall.

Mr. VERTREES. Mr. Brandeis, you may cross-examine Mr. O'Neill.

Mr. BRANDEIS. That is Andrew Kennedy that you refer to as special agent?

Mr. O'NEILL. I could not tell you, Mr. Brandeis. There are two Kennedys. I really do not know their initials.

Mr. BRANDEIS. This is Kennedy, the coal expert?

Mr. O'NEILL. Yes; the man who testified here.

Mr. BRANDEIS. The man who had come from Alaska?

Mr. O'NEILL. Yes, sir.

Mr. BRANDEIS. He came down to you, and you understand it was immediately after his return from Alaska, was it not?

Mr. O'NEILL. I do not know when he came back.

Mr. BRANDEIS. It was the first time you had seen him after he came back?

Mr. O'NEILL. Yes, sir.

Mr. BRANDEIS. He brought you the key?

Mr. O'NEILL. Yes, sir.

Mr. BRANDEIS. He brought you also a message from Mr. Glavis?

Mr. O'NEILL. Yes, sir.

Mr. BRANDEIS. That Mr. Glavis would like to leave his effects there until he knew what disposition he could make of them?

Mr. O'NEILL. Yes, sir.

Mr. BRANDEIS. Well, on that day that he gave you that key, returned the key to you, which I assume was the key to the grand jury room?

Mr. O'NEILL. Yes, sir.

Mr. BRANDEIS. On the day he returned that key you did not go up with him to the grand jury room?

Mr. O'NEILL. No, sir.

Mr. BRANDEIS. He simply gave you the message?

Mr. O'NEILL. Yes, sir.

Mr. BRANDEIS. And he was to hear from you later as to what was to be done in regard to the storing of the effects?

Mr. O'NEILL. Yes, sir.

Mr. BRANDEIS. Well, then you sent word to him by Mr. Kennedy that you wanted the effects moved out of the grand-jury room?

Mr. O'NEILL. No. I told him I would be ready—of course I knew they could not remain in the grand-jury room, for when the grand jury convened it would have to have its room.

Mr. BRANDEIS. When was it that the grand jury would convene?

Mr. O'NEILL. Some time in the latter part of September, I think.

Mr. BRANDEIS. And it was in the preparation for the convening of the grand jury that you wanted the things moved out?

Mr. O'NEILL. Yes; of course I knew they could not stay there for any length of time.

Mr. BRANDEIS. Well, then Andrew Kennedy came up to your office and you went up with him to the grand-jury room?

Mr. O'NEILL. No, sir; I went to his office.

Mr. BRANDEIS. That is, you went into the main office in 219?

Mr. O'NEILL. Yes, sir.

Mr. BRANDEIS. Then you went together into the grand-jury room?

Mr. O'NEILL. Yes, sir.

Mr. BRANDEIS. You had the key and have retained it the whole time?

Mr. O'NEILL. Yes, sir; at all times after he returned to me the key that he had.

Mr. BRANDEIS. Well, now, when you went in there with Andrew Kennedy what was the general appearance of that room?

Mr. O'NEILL. There were a number of things on the floor, papers, and there was this frame and a ship log, I think it is, and some other diagram, or something that was framed also. They were standing against the wall. Papers were strewn around the floor, some papers in the box, and there were some kettles and this sleeping bag and tent were thrown around on the floor, and there were some axles and sundry things that I can not recall.

Mr. BRANDEIS. Well, were there any books?

Mr. O'NEILL. Yes, sir, there were—

Mr. BRANDEIS. Where were they?

Mr. O'NEILL. I think they were in the box, but I would not be positive as to where they were at that time.

Mr. BRANDEIS. That is, whether they were in the box or on the table—there was a table there, was there not?

Mr. O'NEILL. The table was standing in the center of the floor and the box was in a sort of alcove off that room.

Mr. BRANDEIS. Then these things that you refer to, some of them were on the table and some in the box and some on the floor, and what I would suppose to a tidy man must have seemed to be in very great disorder?

Mr. O'NEILL. Yes, sir.

Mr. BRANDEIS. Now, what was done with those things scattered around as you have described them?

Mr. O'NEILL. Mr. Kennedy said he was going to put them together and put them where I would show him they could be stored until Mr. Glavis sent for them.

Mr. BRANDEIS. Well, did he put them together?

Mr. O'NEILL. I did not see him, but I dare say he did, for they were put over where I showed him. I went over and opened the room and called the janitor and told him to move those things in that room over to room No. 405.

Mr. BRANDEIS. You saw those things scattered round on the table and the floor and part in the box and everywhere there?

Mr. O'NEILL. Yes, sir.

Mr. BRANDEIS. You left it to Mr. Kennedy to pack them up?

Mr. O'NEILL. Yes, sir.

Mr. BRANDEIS. And then did you leave him in possession of the grand jury room?

Mr. O'NEILL. Yes, sir.

Mr. BRANDEIS. And how soon after that—that is, I mean you left him in possession of the grand jury room, but you kept the key yourself?

Mr. O'NEILL. Yes, sir.

Mr. BRANDEIS. How soon after that was it that you learned from any source that Mr. Kennedy was ready to have those things moved?

Mr. O'NEILL. Oh, they were—I knew it the next day that they were ready to be moved. Well, he did move them right then. I called the janitor to come and move them when Kennedy was ready.

Mr. BRANDEIS. Whenever Kennedy said he was ready?

Mr. O'NEILL. Yes; so that Kennedy got them. I left the janitor with Kennedy; I simply went and ordered the janitor to come and move them when he got ready.

Mr. BRANDEIS. You left the janitor really in charge with Mr. Kennedy?

Mr. O'NEILL. Yes, sir.

Mr. BRANDEIS. Did he retain the key—the janitor?

Mr. O'NEILL. No; the door was left open.

Mr. BRANDEIS. The door was left open?

Mr. O'NEILL. Yes, sir.

Mr. BRANDEIS. And you left the janitor with Mr. Kennedy to be with him and possibly to help in the work of putting the things into the box and getting at them?

Mr. O'NEILL. I do not recall that. I think that all the janitor did was to get the truck and move the things when Mr. Kennedy said he had them ready.

Mr. BRANDEIS. Well, then did you give the janitor the key of that other room, 505?

Mr. O'NEILL. No, sir; I left it open for them.

Mr. BRANDEIS. You did leave that other room open?

Mr. O'NEILL. Yes, sir.

Mr. BRANDEIS. And when was this box moved in; and the barrels, suppose, also?

Mr. O'NEILL. They were moved in that day.

Mr. BRANDEIS. They were moved in that day?

Mr. O'NEILL. Yes, sir.

Mr. BRANDEIS. Well, when was it locked up?

Mr. O'NEILL. They locked it up immediately when they put it in.

Mr. BRANDEIS. Is it a self-locking door?

Mr. O'NEILL. Yes, sir.

Mr. BRANDEIS. So that all he had to do when they went out was to close the door and it would latch?

Mr. O'NEILL. Yes, sir.

Mr. BRANDEIS. That is true, also, of the grand-jury room?

Mr. O'NEILL. No, sir; the grand-jury room is not a self-locking door.

Mr. BRANDEIS. So, then, you afterwards locked that yourself?

Mr. O'NEILL. Yes, sir.

Mr. BRANDEIS. And when you went in there to lock it, you looked in and saw there was nothing there?

Mr. O'NEILL. Yes, sir.

Mr. BRANDEIS. At first when you went into the grand-jury room that first day with Kennedy the box was not nailed up? It was ready opened? One or two boards were off?

Mr. O'NEILL. Two boards.

Mr. BRANDEIS. Two boards were off?

Mr. O'NEILL. Yes, sir.

Mr. BRANDEIS. When you went into room 405 and saw this box in there, was it nailed up then?

Mr. O'NEILL. No, sir. One board was put with the nails back in the holes from whence they had been drawn and the other board was just thrown loosely on top, without any nails.

Mr. BRANDEIS. Now, was that the precise condition that you found that box in, when you went up there with Mr. Parks?

Mr. O'NEILL. Yes, sir.

Mr. BRANDEIS. And when you left that day with Mr. Parks, did you leave it in just that same condition?

Mr. O'NEILL. Practically the same, because I put those nails back and the loose board.

Mr. BRANDEIS. Just put the loose board down also, did you?

Mr. O'NEILL. Yes, sir.

Mr. BRANDEIS. And then when you came on that next visit the box was in that same condition when Mr. Christensen was there. The board was loose in the same way?

Mr. O'NEILL. Yes, sir.

Mr. BRANDEIS. How was it with the barrels?

Mr. O'NEILL. The barrels were nailed up. Both of them had burr up over them and one had been——

Mr. BRANDEIS. That was true of the barrels—at least up to this visit with Mr. Christensen, when he, with your assistance, broke open the barrels?

Mr. O'NEILL. I think they were. I am not positive that the barrels were ever opened in the building. I don't know.

Mr. BRANDEIS. You spoke of a music box, and a box of music records. They were in 410?

Mr. O'NEILL. Yes, sir.

Mr. BRANDEIS. And those boxes were securely nailed. They had to be broken open?

Mr. O'NEILL. We never opened the music box, because we could see through. There were only slats nailed across and there was no need of opening it. We could see it was a musical instrument of some kind, and I got an axe and pried open one board off the box underneath and found it contained these brass records.

Mr. BRANDEIS. That you broke open?

Mr. O'NEILL. Yes, sir.

Mr. BRANDEIS. And the other box that you broke open, I understand, was a box containing a picture?

Mr. O'NEILL. Yes, sir.

Mr. BRANDEIS. Then, there were only two boxes that you broke open?

Mr. O'NEILL. Yes; two boxes that we opened.

Mr. BRANDEIS. That is the box——

Mr. O'NEILL. And the barrels.

Mr. BRANDEIS. I am talking of the box with the music record and the box containing the picture. That was a large picture, was it—a large, rather thin box like a picture would naturally be packed in? Did you break that open?

Mr. O'NEILL. Yes, sir.

Mr. BRANDEIS. And the box in which these letters were found there was no occasion to break open, because it was already open?

Mr. O'NEILL. Yes, sir.

Mr. BRANDEIS. The barrels were securely fastened, and you understand either both or one of them was broken open by Mr. Christensen?

Mr. O'NEILL. I don't know whether he did break—we did——

Mr. BRANDEIS. I mean it was with Mr. Christensen, whether he did it or you. I mean it was done on that occasion and you acted merely in assisting Mr. Christensen as a matter of accommodation for what he wanted done?

Mr. O'NEILL. Yes, sir.

Mr. BRANDEIS. When you began to unpack that box, just what part did you take yourself?

Mr. O'NEILL. Well, I lifted out the sleeping bag and the tent and the dictionary at the time that Mr. Christensen was taking off his coat.

Mr. BRANDEIS. Where did you put those things?

Mr. O'NEILL. I just threw them on the floor close by.

Mr. BRANDEIS. You put them right down there?

Mr. O'NEILL. Yes, sir; just threw them on the floor.

Mr. BRANDEIS. And while you were finishing that he began to fish into the box to get at the other things?

Mr. O'NEILL. We both stood on one side of the box; yes, sir.

Mr. BRANDEIS. But these papers he picked out, did he?

Mr. O'NEILL. I reached down and took one of those long books, and the next thing he lifted out was this bunch of papers.

Mr. BRANDEIS. That was the first you had seen of those at all?

Mr. O'NEILL. Yes, sir.

Mr. BRANDEIS. Had you noticed those papers as being the same papers lying around in the room you spoke of when you were in there with Mr. Andrew Kennedy?

Mr. O'NEILL. I did not take any notice of the papers then.

Mr. BRANDEIS. You just saw there were papers lying around and you did not look at them to see what they were?

Mr. O'NEILL. No, sir.

Mr. BRANDEIS. So that you could not give the committee any closer idea of what the papers were that were lying around when Andrew Kennedy began to pack up things?

Mr. O'NEILL. No, sir. I could not, any more than they were papers with writing on.

Mr. JAMES. Where was Mr. Glavis when Mr. Kennedy packed those papers?

Mr. O'NEILL. I don't know, sir. I never saw Mr. Glavis, and the morning we heard he was removed, which was somewhere about the 1st, I should judge, of September—I never saw him until I met him here in Washington.

Mr. JAMES. At the time Mr. Kennedy packed these things was Glavis in Seattle?

Mr. O'NEILL. I do not know.

Mr. JAMES. What day of the month was that?

Mr. O'NEILL. That Mr. Kennedy packed them?

Mr. JAMES. Yes.

Mr. O'NEILL. It was a few days after he returned the key. It was somewhere along about the 23d or 25th. It was very soon after that.

Mr. JAMES. The 23d or 25th of what?

Mr. O'NEILL. Of September.

Mr. JAMES. Mr. Glavis had gone away from there?

Mr. O'NEILL. Yes.

Mr. JAMES. He never was back there in Seattle?

Mr. O'NEILL. No, sir.

Mr. JAMES. So at the time this box was packed and you saw these matters around on the floor Glavis was not there and had not been there, to your knowledge since?

Mr. O'NEILL. No, sir.

Senator PURCELL. Mr. O'Neill, you said that when you took the board off the top of the box you and Mr. Christensen were together?

Mr. O'NEILL. Yes, sir.

Senator PURCELL. And the first thing you saw was this sleeping bag, was it?

Mr. O'NEILL. Yes, sir.

Senator PURCELL. That laid on top of everything?

Mr. O'NEILL. It is a long box, and the sleeping bag and the tent were thrown in side by side. The sleeping bag is rolled up and makes quite a large-sized roll.

Senator PURCELL. How big a bundle did the sleeping bag make. Just illustrate that?

Mr. O'NEILL. About that high, I should imagine [indicating].

Senator PURCELL. And how long?

Mr. O'NEILL. About that long [indicating]. I will tell you, it is a skin sewed with the fur inside and rolled up.

Senator PURCELL. The skin of what?

Mr. O'NEILL. Of some animal; probably a bear, or something. I don't know just what the skin is.

Senator PURCELL. How long would you say it was?

Mr. O'NEILL. Probably 18 to 24 inches.

Senator PURCELL. Did it extend clear across the top of the box?

Mr. O'NEILL. I think it was.

Senator PURCELL. Did it?

Mr. O'NEILL. I don't remember just exactly the way it lay in the box, except that the tent covered everything else beneath it.

Senator PURCELL. The sleeping bag and the tent were the only things you could see when you first opened the box?

Mr. O'NEILL. That is practically all I saw or noticed. We did not really expect to take it out of the box. We were just beginning to unpack.

Senator PURCELL. Just think a moment. Can you recollect now of seeing anything else?

Mr. O'NEILL. I think I could see one of the books, the dictionary.

Senator PURCELL. But you say you think you could?

Mr. O'NEILL. I think I could.

Senator PURCELL. Would you swear that you could?

Mr. O'NEILL. They were just in there.

Senator PURCELL. The first thing that you saw on the top of that box was this sleeping bag and the tent, and this dictionary, or book?

Mr. O'NEILL. Yes, sir.

Senator PURCELL. How big was the tent?

Mr. O'NEILL. It was also rolled up. I don't know how large it was.

Senator PURCELL. About how large was it? Was it laid there?

Mr. O'NEILL. It was a pretty good-sized roll; pretty near as large as the sleeping bag; probably not so closely rolled up.

Senator PURCELL. You took these things out yourself?

Mr. O'NEILL. Yes, sir.

Senator PURCELL. You did that personally?

Mr. O'NEILL. Yes, sir.

Senator PURCELL. Which one did you take first?

Mr. O'NEILL. I really could not say.

Senator PURCELL. Did you take the tent and the book together?

Mr. O'NEILL. No, sir.

Senator PURCELL. Did you take each separately?

Mr. O'NEILL. Yes, sir.

Senator PURCELL. Which one, in your judgment, did you take first?

Mr. O'NEILL. I took the tent first.

Senator PURCELL. Where did you lay it?

Mr. O'NEILL. Just threw it down on the floor.

Senator PURCELL. Did you move away from the box?

Mr. O'NEILL. No, sir.

Senator PURCELL. Did you turn your back to the box?

Mr. O'NEILL. No, sir.

Senator PURCELL. Did you keep looking at the box?

Mr. O'NEILL. I stayed there and threw it down, and Mr. Christensen was there taking off his coat.

Senator PURCELL. What for?

Mr. O'NEILL. He didn't want to get himself dirty, I suppose.

Senator PURCELL. After you threw that down, did you take up the book yourself?

Mr. O'NEILL. Yes, sir.

Senator PURCELL. Did you throw that down, also?

Mr. O'NEILL. Yes, sir.

Senator PURCELL. And you didn't take your eyes off the box?

Mr. O'NEILL. No, sir.

Senator PURCELL. Did you throw the dictionary in the same place?

Mr. O'NEILL. I laid the dictionary on the table next to the box.

Senator PURCELL. Did you have to move to do it? Did you keep your eye on the box all the time?

Mr. O'NEILL. I didn't have my eye on it. I didn't suspect.

Senator PURCELL. Why is it that you say you did?

Mr. O'NEILL. How do you mean?

Senator PURCELL. Why is it you say you were looking at the box all the time?

Mr. O'NEILL. I was there to unpack that box, and that was all I was doing.

Senator PURCELL. Do you swear that you did or did not take your eyes off the box during the time you were taking away either one of these articles—the sleeping bag, the tent, and the dictionary?

Mr. O'NEILL. If I was moving something out of that box I could turn my eyes.

Senator PURCELL. You say you picked up another book after you had got the tent and the dictionary out and the sleeping bag?

Mr. O'NEILL. Yes, sir.

Senator PURCELL. And that was quite a large book, about the size of the one in front of you [indicating]?

Mr. O'NEILL. It was a little longer, possibly.

Senator PURCELL. What did you do with that?

Mr. O'NEILL. I laid it right on the dictionary.

Senator PURCELL. Up until that time, what was Mr. Christensen doing?

Mr. O'NEILL. He was getting his coat open, and unrolling his cuffs, and then he came up to the box.

Senator PURCELL. He had done nothing?

Mr. O'NEILL. Practically nothing.

Senator PURCELL. And he had not put his hand into the box?

Mr. O'NEILL. No, sir.

Senator PURCELL. He was just stripping himself?

Mr. O'NEILL. Yes, sir.

Senator PURCELL. You saw him do that?

Mr. O'NEILL. Yes, sir.

Senator PURCELL. You are sure of that?

Mr. O'NEILL. Yes, sir.

Senator PURCELL. And you saw him do that and watched the box at the same time.

Mr. O'NEILL. I could see him taking off his coat, surely.

Senator PURCELL. You saw him taking off his coat?

Mr. O'NEILL. Yes, sir.

Senator PURCELL. You are sure of that?

Mr. O'NEILL. I am.

Senator PURCELL. You saw him take off his cuffs?

Mr. O'NEILL. He opened them and rolled them back.

Senator PURCELL. Did he take off his collar?

Mr. O'NEILL. No.

Senator PURCELL. He just took off his coat and rolled back his cuffs?

Mr. O'NEILL. Yes, sir.

Senator PURCELL. Now, when you took that book up, was he standing up—Christensen—or bending over the box?

Mr. O'NEILL. When I took the book?

Senator PURCELL. When you took the second book up?

Mr. O'NEILL. I don't remember.

Senator PURCELL. But the first that you saw of these letters was when he says "Oh, my God, here are these missing letters?"

Mr. O'NEILL. Yes, sir. I saw him take them out of the box.

The CHAIRMAN. Did you see him put anything into the box?

Mr. O'NEILL. I did not.

Senator PURCELL. But you did hear him say, "Oh, my God, here are these missing letters?"

Mr. O'NEILL. Yes, sir, I did. And I saw the letters in his hand.

Senator PURCELL. How many letters were there?

Mr. O'NEILL. The letters that I counted afterwards I think there were about 24 or 25. I made the examination hurriedly down in his office.

Senator PURCELL. Were they in an envelope?

Mr. O'NEILL. They were all in a bunch, fastened together in one corner.

Senator PURCELL. They were in sheets and fastened together?

Mr. O'NEILL. Yes, sir.

Senator PURCELL. Did you see him when he picked them up?

Mr. O'NEILL. Yes, sir.

Senator PURCELL. And the instant he picked them up he exclaimed with surprise, "Oh, my God, here are these missing letters?"

Mr. O'NEILL. Yes, sir.

Senator PURCELL. He had not had time to examine them, had he?

Mr. O'NEILL. He saw what they were.

Senator PURCELL. You say he saw what they were?

Mr. O'NEILL. Yes, sir.

Senator PURCELL. Did he read them over?

Mr. O'NEILL. He had picked up the letters like this [indicating], and he first turned them over like that [indicating], and he said, "Oh, my God, here are these missing letters."

Senator PURCELL. Did you see them before he picked them up?

Mr. O'NEILL. The letters?

Senator PURCELL. Yes.

Mr. O'NEILL. No, sir; I saw the papers.

Senator PURCELL. I mean the letters.

Mr. O'NEILL. I could not say that I saw those letters. I saw the papers down in the box.

Senator PURCELL. I mean the letters. Did you see the letters in the box before Christensen picked them up?

Mr. O'NEILL. I would not say. I saw the papers and saw him pick up this fold of papers all together.

Senator PURCELL. Then you must have seen them before he took hold of them.

Mr. O'NEILL. I suppose I certainly did.

Senator PURCELL. In other words, the first time you saw them they were lying in the box. You would swear to that, would you?

Mr. O'NEILL. Yes, sir; I would swear to that.

Senator PURCELL. And you heard him make the exclamation?

Mr. O'NEILL. Yes, sir. If you are trying to get that he put the letters in the box, I would swear that he did not, because he brought that stuff out of the box.

Senator PURCELL. I am not asking you that. I did not care to ask you that question, Mr. O'Neill. You have charge of that building?

Mr. O'NEILL. Yes, sir.

Senator PURCELL. You have a secretary?

Mr. O'NEILL. No, sir.

Senator PURCELL. That is all.

Mr. OLMSTED. Wouldn't it have been possible for Mr. Christensen to have slipped them into the box?

Mr. O'NEILL. I don't see how he could very well without my seeing it. It could be possible, but I would swear that he did not. I was right there with him and saw him take off his coat and come to the box without anything in his hands, and I do not see how he could put them in there.

Mr. OLMSTED. Did he have any papers in his hand before he went to the box?

Mr. O'NEILL. Nothing before we came to the box. He was with me when he opened the other box in the other room.

Mr. OLMSTED. Were these papers folded up or lying out flat?

Mr. O'NEILL. They were all flat.

Mr. OLMSTED. Were they in a book?

Mr. O'NEILL. Sir?

Mr. OLMSTED. Were they lying in a book?

Mr. O'NEILL. They were fastened by the corners. All loose together. One corner of each bunch was fastened.

Mr. OLMSTED. Were they immediately underneath the dictionary or under some of the other books?

Mr. O'NEILL. They were under some of the large books that I speak of.

Mr. OLMSTED. Who lifted the books from off the papers?

Mr. O'NEILL. I lifted off the dictionary, and I think one of the books—I would not swear but Mr. Christensen lifted off another one of the books. I do not remember just how the books were lifted off except that I lifted off the dictionary.

Mr. OLMSTED. Did you see any papers when you lifted off the books?

Mr. O'NEILL. Yes, sir.

Mr. OLMSTED. These papers?

Mr. O'NEILL. I would not swear that they were the papers that I saw afterwards, because there were a great many papers that he took out of the box that he said belonged to the office. Whether they were these papers or these letters that he laid so much importance to I would not be positive about, but I saw him lift these papers out of the box.

The CHAIRMAN. And put them into your hands?

Mr. O'NEILL. And then put the letters into my hands and looked for more, and I says: "This will get me into this thing." And I said, "Now I better be sure that I will be able to identify those letters." It was a bunch about that big [indicating].

Senator FLETCHER. Half an inch?

Mr. O'NEILL. About a half an inch. Twenty-four or 25 sheets of paper in a clip.

Senator FLETCHER. Did that bear evidence of having been touched at any time?

Mr. O'NEILL. Yes, sir. That is, that they had been in envelopes. They would bear evidence that they had been put in envelopes, and that they were all fastened together.

Mr. BRANDEIS. Is that all, Mr. Olmsted?

Senator FLETCHER. Who had access to that grand-jury room between the time Mr. Kennedy left the things in the grand-jury room and the time they were taken out?

Mr. O'NEILL. One key was in the possession of the bailiff of the judiciary department and one key was for the use of the janitor, and I had a key.

Senator FLETCHER. Did Mr. Sheridan have access to it?

Mr. O'NEILL. Not at that time. Later, when those things were removed from the grand-jury room and when they began to have that investigation and Mr. McGhee came to the building, they had the use of the grand-jury room. That was some time afterwards. It was cleared because they used it for their typewriters.

Mr. BRANDEIS. Mr. O'Neill, you said there were only 24 or 25 sheets. That that was all there was?

Mr. O'NEILL. That is as far as I can remember.

Mr. BRANDEIS. And these sheets you made an exact copy or a notation of everything there was?

Mr. O'NEILL. As you will see by my brief there, I just made a notation of the name of the person who wrote the letter and to whom it was written, and I think the date of the letter.

Mr. BRANDEIS. And that list that you put in you checked off, and you know that that list represents every sheet of paper there was there? I mean unless a letter occupied two sheets; unless it took up two pages to make up a letter?

Mr. O'NEILL. Yes, sir.

Mr. BRANDEIS. And everything there was there in those 24 or 25 sheets is represented on your list?

Mr. O'NEILL. I think they are. I did not have anyone that I remember now of checking them with me, but I copied it down in pencil.

Mr. BRANDEIS. And are you certain of that, except to the error of having overlooked one or another as you wrote it down?

Mr. O'NEILL. That is, of the original letters that were written in ink. The other was a typewriter copy and a carbon copy.

Mr. BRANDEIS. Did you check those up?

Mr. O'NEILL. No; I paid no attention to those.

Mr. BRANDEIS. You don't know anything about those?

Mr. O'NEILL. They were as he found them.

Mr. BRANDEIS. Did you have them?

Mr. O'NEILL. I did not have them in my hand.

Mr. BRANDEIS. Did you have them when you were making up this list?

Mr. O'NEILL. No, sir; I did not.

Mr. BRANDEIS. What was done with those?

Mr. O'NEILL. I left them, with all of the other material, with Mr. Christensen.

Mr. BRANDEIS. You never examined those at all?

Mr. O'NEILL. Except to look to see that they were the copies.

Mr. BRANDEIS. How did you look?

Mr. O'NEILL. To see if they had the same names and the same dates.

Mr. BRANDEIS. Did you check those up?

Mr. O'NEILL. I did not check them up, but compared them.

Mr. BRANDEIS. Then your list is a list of every original letter there was there?

Mr. O'NEILL. Yes, sir.

Mr. BRANDEIS. And you believe it to be an absolutely accurate list of every original letter you have there, and that is the document that has been put in evidence?

Mr. O'NEILL. To the best of my knowledge; yes, sir.

Mr. BRANDEIS. I would like this plan which Mr. O'Neill was good enough to bring here to appear in evidence, showing the names and numbers of the rooms.

(The plat of the fourth story of the federal building at Seattle here mentioned will appear at the beginning of the testimony of Friday, April 8, 1910.)

Mr. JAMES. Did you recognize in this box that you were able to identify any of the things which you took out of there, which Mr. Christensen took out of the box which you had previously seen upon the floor, which Mr. Kennedy was to pack?

Mr. O'NEILL. Yes, sir.

Mr. JAMES. What were they?

Mr. O'NEILL. The sleeping bag and the tent and the dictionary, and these two framed—it is a log of a ship, as near as I can make out. I think it was written in Spanish.

Mr. JAMES. Any of these other books besides the dictionary?

Mr. O'NEILL. I didn't pay any attention to the books or papers.

Mr. JAMES. You had seen them scattered around on the floor?

Mr. O'NEILL. Yes, sir.

Mr. JAMES. And Kennedy packed it in this box himself?

Mr. O'NEILL. Yes, sir.

Mr. JAMES. Did you see anything of any log scales there?

The CHAIRMAN. He meant the log of a ship.

Mr. O'NEILL. The log of a ship.

Mr. JAMES. I know what he meant, but I am asking about the testimony of Mr. Kennedy about some log scales. That is the point I am trying to get information on. Did you see any such thing in the room?

Mr. O'NEILL. There was something in a long——

Mr. JAMES. In a bundle?

Mr. O'NEILL. Yes, sir; that is in the room also.

Mr. JAMES. You did not examine to see what was in the bundle?

Mr. O'NEILL. You mean for scaling logs?

Mr. JAMES. I do not know whether they were for scaling logs or not.

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Mr. O'NEILL. It is something they use in the land department.

Mr. JAMES. Mr. Kennedy called them log scales.

Mr. O'NEILL. They were wrapped up by themselves and stand in the corner of room 405.

Mr. JAMES. Those things were scattered about over the room?

Mr. O'NEILL. I don't remember whether they were. I saw them in the storeroom.

Mr. JAMES. These things were packed in the box by Kennedy?

Mr. O'NEILL. They were in—

Mr. JAMES. You didn't see that in the box?

Mr. O'NEILL. No. That couldn't get in the box. That was wrapped up by itself. It would have to be packed by itself.

The CHAIRMAN. Is that all? If so, the committee will stand adjourned.

Mr. BRANDEIS. It is understood that this witness will have to remain.

Mr. VERTREES. Here is the statement of Mr. Glavis which you called for this morning.

Mr. BRANDEIS. I would like to have that go in evidence.

The CHAIRMAN. It will be admitted in evidence. Hand it to the stenographer.

The committee will adjourn until next Friday at 10 o'clock.

(The paper is as follows:)

SPOKANE, WASH., December 9, 1909.

COMMISSIONER GENERAL LAND OFFICE,

Washington, D. C.

SIR: Referring to my August, 1909, monthly account, I desire to explain the following expenditures:

Voucher No. 1, for typewriting by Miss Annie Flexner, was necessary, since I had borrowed the books and records of the Anglo-American Coal Company, and it was necessary to return them the same day. These records contained evidence sufficient to practically cancel all the Alaska coal filings involved in this group, and I therefore deemed it advisable to have copies made.

Vouchers Nos. 2 and 4, for typewriting, was for the preparation of my report to the President in reference to the Alaska coal cases, and the absolute necessity for submitting this report is well known to you.

Voucher No. 3. It will be noted that the title of the person signing for the company has not been furnished. I have written them and submitted another voucher, which I have asked to be mailed to you.

The two extra-fare charges mentioned in my transportation requests saved one working day each, and was therefore a saving of time and expense to the Government. This same charge has heretofore been made when I was in the East earlier in the year, and the expenses were necessary and for the best interests of the service.

Respectfully,

L. R. GLAVIS.

[Department of the Interior, General Land Office. 4-160. Form approved by Comptroller of the Treasury April 11, 1908.]

SUBVOUCHER FOR TRAVELING AND OTHER EXPENSES.

No 1.

AUGUST 7, 1909.

Received of L. R. Glavis, Chief of Field Division, Five and 60/100 dollars in cash, in full payment of following account: Typewriting and comparing twenty-three (23) pages, 5.60.

Total, \$5.60.

ANNIE FLEXNER,
Portland, Oregon.

(Not to be signed in duplicate.)

INVESTIGATION INTERIOR DEPT. AND BUREAU OF FORESTRY. 2643

[Department of the Interior, General Land Office. 4-160. Form approved by Comptroller of the Treasury April 11, 1908.]

SUBVOUCHER FOR TRAVELING AND OTHER EXPENSES.

No. 2.

AUGUST 15, 1909.

Received of L. R. Glavis, Chief of Field Division, fifty-five no/100 dollars in cash, in full payment of following account: To 96 pages copy with 2 carbons and 51 pages dictated with 2 carbons, at \$55.00 per job, 55.00.
Total, \$55.00.

LORENE SHEETZ,
918 First National Bank Bldg., Chicago, Ill.

(Not to be signed in duplicate.)

[Department of the Interior, General Land Office. 4-160. Form approved by Comptroller of the Treasury April 11, 1908.]

SUBVOUCHER FOR TRAVELING AND OTHER EXPENSES.

No. 3.

AUGUST 18, 1909.

Received of L. R. Glavis, Chief of Field Division, three and 50/100 dollars in cash, in full payment of following account: Hire of hack & horse, with driver (no expenses), to country & return, from 2.30 p. m., Aug. 18th, to 5.30 p. m., Aug. 18, at \$1.50 per first hour and \$1.00 each succeeding hour, \$3.50.
Total, \$3.50.

WARREN LIVERY STABLE,
A. B. ALLEN, Beverly, Mass.

(Not to be signed in duplicate.)

[Department of the Interior, General Land Office. 4-160. Form approved by Comptroller of the Treasury April 11, 1908.]

SUBVOUCHER FOR TRAVELING AND OTHER EXPENSES.

No. 4.

AUGUST 20, 1909.

Received of L. R. Glavis, Chief of Field Division, one and 35/100 dollars in cash, in full payment of following account: For typewriting three pages of legal cap, at \$.35 per page, 1.05, and six pages, carbon copy, at 5 cts. per page, .30.
Total, \$1.35.

MARY A. DOOTSON,
Boston, Mass.

(Not to be signed in duplicate.)

[Copy.]

To Lorene Sheetz & Company, Public Stenographers, 918 First Nat'l Bank Bldg.:

To 96 pages copy with 2 carbons ea., at.....	\$26.55
" 51 " dictated with 2 carbons ea., at.....	28.45
	<hr/> \$55.00

Received payment.

(Signed) LORENE SHEETZ & Co.

[Telegram.]

ALBANY, N. Y., August 24, 1909.

ELLA SHARTELL,
219 Federal Bldg., Seattle, Wash.:

Have Bowman proceed immediately Chicago and meet me at Great Northern Hotel.
GLAVIS, Chief.

() B. Govt. rates 23 words, 46 cts.

2644 INVESTIGATION INTERIOR DEPT. AND BUREAU OF FORESTRY.

[Telegram.]

CHICAGO, Aug. 26, 1909.

ELLA SHARTELL,
219 Federal Bldg., Seattle, Wash.:

Wire train and date Bowman left Seattle for Chicago. I expect to arrive next Thursday.

O. B. Govt. rates.

GLAVIS, Chief.

SPECIAL TRANSPORTATION VOUCHER.

No. 3.

Authorized ———, 190—

Received, Aug. 18, 1909, from L. R. Glavis, special agent General Land Office, three and 1/8 dollars, for hire of one horse and hack *with a driver. Expenses † included in the cost of hire, from Beverly, Mass., to country and return, dates of service from 2.30 p. m., 18th of Aug., to 5.30 p. m., Aug. 18, 1909, inclusive, 3 hours, at \$1.50 per first hour and \$1.00 each succeeding hour.

(No blacksmithing or repairs charged herein.)

\$3.50

(Name) WARNER'S LIVERY STABLE,
Per WINTHROP WEBB ALLEN,
(Post-office) *Beverly, Mass.*

* If driver is used strike out the word "without." If driver is not used strike out the words "with a."

† If expenses of board, etc., are paid by agent strike out the words "included in the cost of hire." If expenses are included in the cost of hire strike out the words "paid by the agent in addition to cost of hire."

(Envelope: Beverly, Dec. 20, 11 a. m., 1909, Mass. The Spokane, Ye Sign of Ye Silver Grill, Spokane, Wash. Commissioner General Land Office, Washington, D. C.)

[Department of the Interior, General Land Office. 4-152. Form approved by Comptroller of the Treasury April 11, 1908.]

Voucher for services and traveling and other expenses.

[Appropriation: Protecting public lands 1909-10.]

The United States, to L. R. Glavis, chief field division, Dr. Seattle, Washington. Voucher No. 21

Date.	Sub-voucher number.	Itemized statement of expenses.	Amount.
1909.			
Aug. 4		N. P. Ry. Co., fare, Portland, Ore., to Seattle, Wash.	\$5.40
"		" " sleeper " " "	2.00
"		Transfer baggage, hotel to depot, Portland, Ore.	.50
"		Bus fare, hotel to depot, " "	.25
5		Fee to porter on sleeper	.10
"		Transfer baggage, depot to hotel, Seattle, Wash.	.25
6		N. P. Ry. Co., sleeper, Seattle to Spokane, Wash.	2.50
"		Transfer baggage, hotel to depot, Seattle, Wash.	.50
7	1	Almee Flaxner, Portland, Ore., for typewriting, etc.	5.00
7		Fee to porter on sleeper	.10
"		Transfer baggage, depot to hotel, Spokane.	.50
"		" " hotel to depot, " "	.50
10		N. P. Ry. Co., sleeper, Spokane, Wash., to St. Paul, Minn.	9.50
10		Fee to porter on sleeper	.10
11		" " " " "	.10
12		" " " " "	.10
13		" " " " "	.10
"		Pullman parlor car fare, St. Paul, Minn., to Chicago, I.	1.25
"		Bus fare, depot to hotel, Chicago.	.50
"		Transfer baggage, depot to hotel, Chicago.	.50
15		Bus fare, hotel to depot, Chicago.	.50
"		Transfer baggage, hotel to depot, Chicago.	.50
"	2	Lorene Sheetz, Chicago, Ill., for typewriting 146 pages and two carbon copies, at \$55 per job.	\$8.00
16		Fee to porter on sleeper	.10
"		Transfer baggage, depot to house, New York City	.50
"		N. Y. N. H. & H., sleeper, N. Y. City to Boston, Mass.	1.50
17		Fee to porter on sleeper	.10

Vouchers for services and traveling and other expenses—Continued.

Date.	Sub-voucher number.	Itemized statement of expenses.	Amount.
1909.			
Aug. 17		B. & M. R. R. fare, Boston to Beverly, Mass. (no reduction round-trip ticket).....	\$0.35
"		Bus fare, depot to hotel, Beverly, Mass.....	.25
18	3	Warner Livery Stable, Beverly, Mass., hire hack & driver, no expenses, to country and return, from 2.30 p. m. to 5.30 p. m., Aug. 18th, @ \$1.50 per first hour and \$1 each succeeding hour.....	3.50
"		B. & M. R. R. fare, Beverly to Boston, Mass.....	.35
20	4	Mary A. Dootson, Boston, Mass., for copy 3 pages legal cap @ 35¢ per page and 6 pages carbon copy @ 5¢ per page.....	1.35
23		N. Y., N. H. & H. sleeper, Boston, Mass., to New York City.....	1.50
24		Fee to porter on sleeper.....	.25
"		Transfer baggage house, to depot, N. Y. City.....	.50
"		N. Y. Central Ry., sleeper, N. Y. City to Chicago, Ill.....	5.00
"		Telegraph message from Albany, N. Y., to Ella Shattell, Seattle, Wash., 23 words.....	.45
25		Fee to porter on sleeper.....	.25
"		Transfer baggage, depot to hotel, Chicago, Ill.....	.50
"		Bus fare, depot to hotel, Chicago, Ill.....	.50
26		Telegraph message from Chicago to Ella Shattell, Seattle, Wash., 26 words.....	.47
29		C. N. W. Ry. sleeper, Chicago to St. Paul, Minn.....	2.00
"		Bus fare, hotel to depot, Chicago, Ill.....	.50
30		Transfer baggage, hotel to depot, Chicago, Ill.....	.50
"		Fee to porter on sleeper.....	.25
Aug. 31		Fee to porter on sleeper.....	.25
		Notary fee to this account.....	.50
		Total	108.93
		TRANSPORTATION REQUESTS.	
Aug. 10	47913	N. P. Ry. Co., fare, Spokane, Wash., to Chicago, Illinois.....	45.70
" 13	47914	Penn. Ry. Co., fare, Chicago, Illinois, to New York City, N. Y.....	20.00
" 15	47915	Penn. Ry. Co., berth & extra fare, Chicago, Ill., to N. Y. City, N. Y.....	15.00
" 16	47916	N. Y., N. H. & H. R. R., fare, N. Y. City, N. Y., to Boston, Mass.....	4.55
" 23	47917	N. Y., N. H. & H. R. R., fare, Boston, Mass., to New York City, N. Y.....	4.55
" 24	47918	N. Y. C. R. R., fare, New York City, N. Y., to Chicago, Ill.....	24.00
" 27	47919	C. N. W. Ry. Co., fare, Chicago, Ill., to Portland, Ore.....	55.90
" 27	47920	P. P. C. Co., berth, St. Paul, Minn., to Seattle, Wash.....	12.00

Expenditures, as shown by foregoing itemized statement..... \$108.93
 Services, from Aug. 1, 09, to Aug. 31, 09, inclusive, at \$2,220 per annum..... 185.00
 Per diem in lieu of subsistence from Aug. 1, 09, to Aug. 31, 09 (except),
 31 days, at \$3.00 per day..... 93.00
Total..... **386.93**

OATH OF CLAIMANT.

I do solemnly swear that the above account and itemized statement are just and true in all respects, as verified by a memorandum kept by me; that the distances as charged have been actually and necessarily traveled on the dates therein specified; that the amounts as charged have been actually paid by me for traveling expenses; that I have not and will not receive, directly or indirectly, from any person, agency, or corporation any sums as rebate on account of any expense of transportation included in this account; that no charge for transportation is greater on account of meals included therein; that none of such distances for which charge is made was traveled under any free pass on any conveyance; that no part of the account has been paid by the United States, but the full amount is justly due; and that all expenditures included in said account other than my own personal traveling expenses were made under urgent or unforeseen public necessity. So HELP ME God.

LOUIS R. GLAVIS,

(Not to be signed in duplicate.)

Subscribed and sworn to before me at Spokane, Wash., this 9 day of Dec., 1909.

[SEAL.]

JOHN P. BIGELOW,

Notary Public in and for the State of Washington residing at Spokane, Wn.

My commission expires Mch. 17, 1912.

Account submitted for..... \$386.93
 Certified at..... 386.93

2646 INVESTIGATION INTERIOR DEPT. AND BUREAU OF FORESTRY.

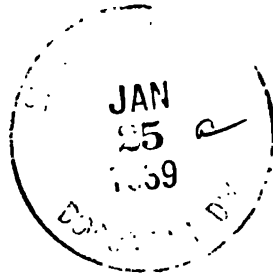
I certify that the foregoing account is correct; that it appears from the records of my office that the person named thereon was legally appointed, and that he has performed the service required by law and the regulations of the Department of the Interior, during the period mentioned; that such service, except as otherwise indicated, has been performed under my supervision; that the person whose name appears in the foregoing voucher is not paid for any period of absence in excess of that allowed by law; and that he is entitled to the amount of pay stated above.

LOUIS R. GLAVIS,

Special Agent & Special Disbursing Agt.

Paid by check No. 64, dated Sept. 2, 1909, on The National Bank of Commerce, Seattle, Wash., in favor of Louis R. Glavis for \$386.93.

(Thereupon, at 5.30 p. m., the committee adjourned until Friday morning, April 8, 1910, at 10 o'clock.)



NO. 27

**HEARINGS BEFORE THE COMMITTEE TO INVESTIGATE THE
INTERIOR DEPARTMENT AND FORESTRY SERVICE**

APRIL 8, 1910

**ROOM 207, SENATE OFFICE BUILDING
WASHINGTON, D. C.**

MEMBERS OF THE JOINT COMMITTEE.

KNUTE NELSON, Minnesota, Chairman.

SAMUEL W. McCALL, Massachusetts, Vice-Chairman.

FRANK P. FLINT, California.

GEORGE SUTHERLAND, Utah.

ELIHU ROOT, New York.

WILLIAM E. PURCELL, North Dakota.

DUNCAN U. FLETCHER, Florida.

MARLIN E. OLMSTED, Pennsylvania.

EDWIN DENBY, Michigan.

E. H. MADISON, Kansas.

OLLIE M. JAMES, Kentucky.

JAMES M. GRAHAM, Illinois.

PAUL SLEMAN, Secretary.

Vouchers for services and traveling and other expenses—Continued.

Date.	Sub-voucher number.	Itemized statement of expenses.	Amount.
1909.			
Aug. 17		B. & M. R. R. fare, Boston to Beverly, Mass. (no reduction round-trip ticket).....	\$0.35
"		Bus fare, depot to hotel, Beverly, Mass. ....	.25
"	3	Warner Livery Stable, Beverly, Mass., hire hack & driver, no expenses, to country and return, from 2.30 p. m. to 5.50 p. m., Aug. 18th, @ \$1.50 per first hour and \$1 each succeeding hour.....	3.50
"		B. & M. R. R. fare, Beverly to Boston, Mass. ....	.35
"	4	Mary A. Dootson, Boston, Mass., for copy 3 pages legal cap @ 3¢ per page and 6 pages carbon copy @ 5¢ per page.....	1.35
"		N. Y., N. H. & H. sleeper, Boston, Mass., to New York City.....	1.50
"		Fee to porter on sleeper.....	.25
"		Transfer baggage house, to depot, N. Y. City.....	.50
"		N. Y. Central Ry., sleeper, N. Y. City to Chicago, Ill.....	5.00
"		Telegraph message from Albany, N. Y., to Ella Shartell, Seattle, Wash., 23 words.....	.45
"		Fee to porter on sleeper.....	.25
"		Transfer baggage, depot to hotel, Chicago, Ill.....	.50
"		Bus fare, depot to hotel, Chicago, Ill.....	.50
"		Telegraph message from Chicago to Ella Shartell, Seattle, Wash., 26 words.....	.47
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"		Bus fare, hotel to depot, Chicago, Ill.....	.50
"		Transfer baggage, hotel to depot, Chicago, Ill.....	.50
"		Fee to porter on sleeper.....	.25
Aug. 31		Fee to porter on sleeper.....	.25
"		Notary fee to this account.....	.50
		Total.....	108.93
		TRANSPORTATION REQUESTS.	
Aug. 10	47913	N. P. Ry. Co., fare, Spokane, Wash., to Chicago, Illinois.....	46.70
"	15	Penn. Ry. Co., fare, Chicago, Illinois, to New York City, N. Y.....	20.00
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"	23	N. Y., N. H. & H. R. R., fare, Boston, Mass., to New York City, N. Y.....	4.65
"	24	N. Y. C. R. R., fare, New York City, N. Y., to Chicago, Ill.....	24.00
"	27	C. N. W. Ry. Co., fare, Chicago, Ill., to Portland, Ore.....	55.90
"	27	P. P. C. Co., berth, St. Paul, Minn., to Seattle, Wash.....	12.00

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 Per diem in lieu of subsistence from Aug. 1, 09, to Aug. 31, 09 (except,
 31 days, at \$3.00 per day..... 93.00

Total..... 386.93

OATH OF CLAIMANT.

I do solemnly swear that the above account and itemized statement are just and true in all respects, as verified by a memorandum kept by me; that the distances as charged have been actually and necessarily traveled on the dates therein specified; that the amounts as charged have been actually paid by me for traveling expenses; that I have not and will not receive, directly or indirectly, from any person, agency, or corporation any sums as rebate on account of any expense of transportation included in this account; that no charge for transportation is greater on account of meals included therein; that none of such distances for which charge is made was traveled under any free pass on any conveyance; that no part of the account has been paid by the United States, but the full amount is justly due; and that all expenditures included in said account other than my own personal traveling expenses were made under urgent or unforeseen public necessity. So HELP ME GOD.

LOUIS R. GLAVIS,

(Not to be signed in duplicate.)

Subscribed and sworn to before me at Spokane, Wash., this 9 day of Dec., 1909.

[SEAL.]

JOHN P. BIGELOW,

Notary Public in and for the State of Washington residing at Spokane, Wn.

My commission expires Mch. 17, 1912.

Account submitted for..... \$386.93
 Certified at..... 386.93

I certify that the foregoing account is correct; that it appears from the records of my office that the person named thereon was legally appointed, and that he has performed the service required by law and the regulations of the Department of the Interior, during the period mentioned; that such service, except as otherwise indicated, has been performed under my supervision; that the person whose name appears in the foregoing voucher is not paid for any period of absence in excess of that allowed by law; and that he is entitled to the amount of pay stated above.

LOUIS R. GLAVIS,
Special Agent & Special Disbursing Agt.

Paid by check No. 64, dated Sept. 2, 1909, on The National Bank of Commerce, Seattle, Wash., in favor of Louis R. Glavis for \$386.93.

(Thereupon, at 5.30 p. m., the committee adjourned until Friday morning, April 8, 1910, at 10 o'clock.)

FRIDAY, APRIL 8, 1910.

JOINT COMMITTEE TO INVESTIGATE THE
INTERIOR DEPARTMENT AND FORESTRY SERVICE,
Washington, D. C., April 8, 1910.

The Joint Committee to Investigate the Interior Department and Forestry Service met pursuant to adjournment at 10 a. m.

There were present as counsel: Mr. Louis D. Brandeis, representing Mr. Louis R. Glavis; Mr. George Wharton Pepper and Mr. Nathan A. Smyth, representing Mr. Gifford Pinchot; Mr. John J. Vertrees and Carl Rasch, representing Secretary Ballinger.

The CHAIRMAN. The committee will come to order. A quorum is present.

The record will here show a reproduction of the plan of the fourth story of the federal building at Seattle, Wash., offered in evidence on Saturday, April 2, 1910, in connection with the testimony of Garrett W. O'Neill.

The CHAIRMAN. Counsel will please proceed.

Mr. BRANDEIS. Mr. Chairman, before commencing the examination of any witness I should like to submit a motion requesting the Secretary to transmit immediately the documents called for in certain calls of March 29, 30, and 31, which were transmitted by the chairman, with request that they be complied with, and as to which the Secretary of the Interior presented certain reasons why he should not comply with them under date of March 29 and March 31. The matter is immediate, and I should like to be heard on it briefly now.

Mr. McCALL. Is the call in the record, Mr. Brandeis, and the answer?

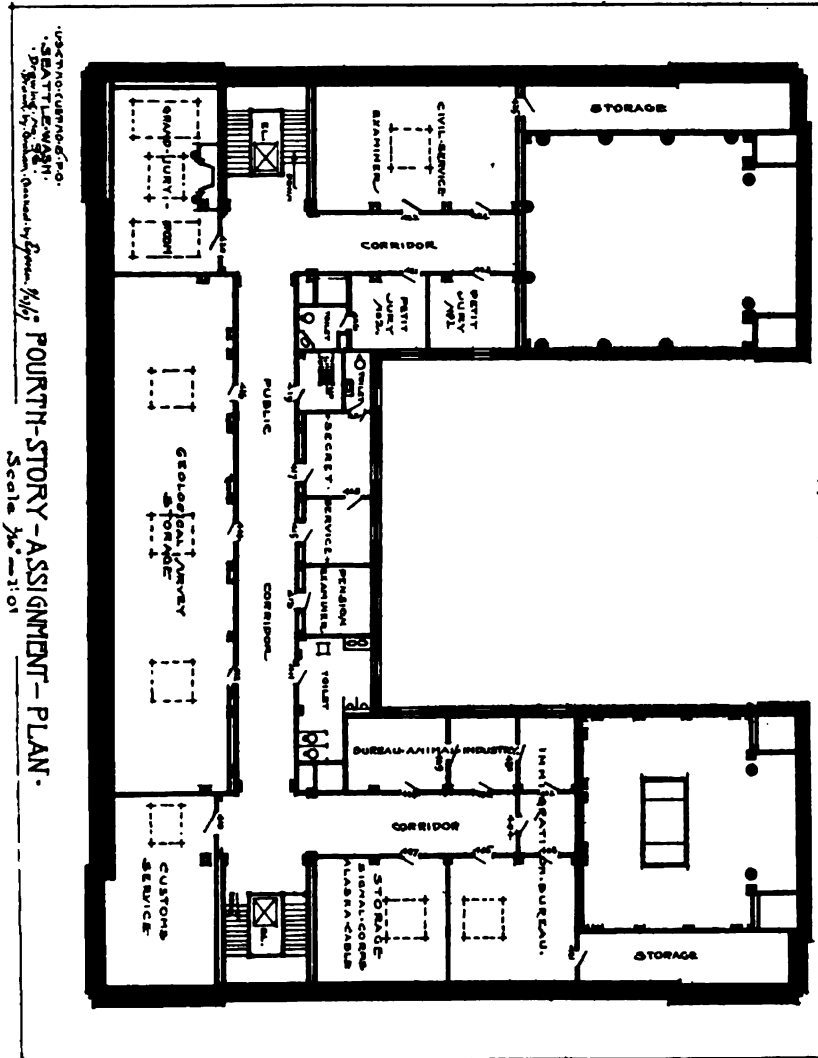
Mr. BRANDEIS. The calls and the answers are in the record. The calls and the answers all appear on pages 2519 to 2522, inclusive. It is in the report No. 25 of the hearing of April 1. Perhaps the matter can be more readily understood if I call attention to the reply under date of March 29 of Secretary Ballinger.

Mr. DENBY. Where does that appear?

Mr. BRANDEIS. It appears at page 2521.

In this connection I beg to add that the demands which have been made on the department for records by Mr. Brandeis since this investigation began have been so numerous and extensive as to result in great inconvenience and expense. That which may be described as the prosecution in these proceedings has now rested, and evidence is now being introduced by counsel representing me. From this statement it is obvious that the demands of Mr. Brandeis can no longer be regarded as in the

urtherance of a proper inquiry, but as being made as a mere "fishing" process. As the prosecution has rested, and as all papers heretofore called for have been furnished, it is respectfully submitted that demands upon this department for records made heretofore should not be allowed unless (1) they relate to some matter to which the evidence now being presented in my behalf relates and which records have not heretofore been presented; (2) or the nature of the evidence desired be set out, together with a statement of what those records will show, the belief of the applicant that the records will show, and the names of the informants upon whom the applicant relies for information to support the demands so made.



Then further in the letter of Secretary Ballinger of March 31, appearing at the bottom of page 2521, he says:

SENATOR: I beg to acknowledge receipt of your letter of the 30th instant, together with copies of letters to you of Mr. L. D. Brandeis, both dated March 30, 1910. In response thereto, I beg to call your attention to my letter to you of March 29 and to say that it appears to me to be a proper response to the further demands now made

by Mr. Brandeis upon me. They are of the same character and subject to the like objection.

As to the affidavits referred to in the letter of March 30, 1910, I would add that they are in the possession of Mr. Christensen, who has been summoned as a witness and who will be examined at an early date, and at that time these affidavits, as well as all other papers relating to the matter to which Mr. Christensen will depose, can then be seen.

I repeat that in these applications made now when the evidence of the prosecution has closed and ours has been entered upon, I see nothing else than an oblique attempt to control the manner in which the evidence I shall present shall be introduced.

Of course I stand ready, in so far as possible, to comply with all orders of the committee made after matters to which I have referred have been made the subject of consideration.

Now, the committee will note that the calls to which I refer and to which the Secretary has replied relate mainly to these things. In the first place, I have asked for all of the documents practically which bear upon this so-called missing-letter matter. I have called for the affidavits which have been made by the various agents, some of which have been referred to in the testimony. I have called for the correspondence between Mr. Christensen and the General Land Office in relation to this matter. I have called, in the course of the hearings, specifically for those affidavits and that correspondence in relation to the proposed prosecution of Mr. Glavis in connection with these so-called missing letters which Mr. Todd referred to. That covers one large branch of the inquiry. I have, in the next place, asked for certain memoranda, letters, and papers made by Mr. Clement, the law officer of the department, whom Mr. Vertrees has said would be one of the witnesses whom he would call. I have likewise asked for similar papers in relation to C. C. Heltman, who was formerly chief of Mineral Division, whom Mr. Vertrees has also said was one of the witnesses that he would call. And, then, I have made other calls for documents relating to matters, largely matters already considered. Now, I take it, the situation as presented by Secretary Ballinger is this: That he is entitled to withhold from examination, in the proper conduct of this inquiry, he is entitled to withhold from information all of these official documents until such time as it may appear to him to be desirable to present them to the committee.

Now, I take it that that is an entire misconception of the nature and purposes of this inquiry and of the right to those documents. The committee must consider the position of extraordinary difficulty, relative difficulty, in which we who are desiring to present matters to this committee are in, as compared to the position of Mr. Ballinger. Not only can we get no documents unless the information which we have, or our knowledge of general affairs, enables us to make a call, whereas all the documents, with all the information, are available to Mr. Ballinger and his counsel; but we can never make a call for a document without putting Mr. Ballinger and his counsel to the fullest extent in possession of matters which we are undertaking to bring to the attention of the committee. There can not, therefore, be, in the nature of things, anything based upon documents which we may produce from the department which could be to Mr. Ballinger and his counsel in the nature of a surprise. We can not get them without asking for them, and asking and giving a notice through this committee to Mr. Ballinger, and we have believed that at times the delay in furnishing documents has frequently been due to the fact not merely that it was hard to find the documents, but that a general search

relating to that subject was under way, and that the documents were not to be furnished us until that search was completed, but however that may be, there can be no question so far as we produce documents which can be in the nature of surprise, because we give the fullest notice. On the other hand, if we are not allowed to examine these documents until it suits Mr. Ballinger's counsel to produce them here, it is absolutely impossible to make that necessary examination and study of them which will make the cross-examination instructive, as it should be, and effective in eliciting the truth.

Mr. Graham called attention at the last hearing to the extraordinary position that he was in in having documents put in without having been read. That is the position in which we must be also, and it is not merely a possibility of reading it but it is also the possibility of studying that document in connection with other evidence in the case, and we should have it. If this is a proceeding, as it is certainly a proceeding, designed to elicit truth, and if counsel are here, as has been repeatedly stated, to aid the committee in eliciting that truth—and it is the only justification for our being here at all—we must have the opportunity of investigating, of looking at those documents, of culling from them in order that we may call it to the attention of the committee what is valuable and what is important, and, of course, we must have that opportunity before the witness who is to testify to the subject-matter in which we deem those documents relevant and important, goes upon the stand. Every cross-examination must be relatively ineffective if the means are denied of bringing out the facts which actually exist. I say further that this objection of Secretary Ballinger is based upon an entire misconception of the nature of those documents. Secretary Ballinger is treating these documents which are intrusted under the law to his care, as if they were private documents, of which he ought not to be deprived the privacy of until he chooses to lay them before the committee. I understand them to be documents which are public for this purpose and which we, which this investigation, which anybody who can reasonably come before this committee to lay facts before you, should have just as full and unrestricted a right to examine, and examine at any time, as Secretary Ballinger and his assistants themselves have. They are not his documents to be withheld until it suits him to put them in, but they are documents which contain presumably the truth, which it is of importance to you, and all who are investigating this matter shall be disclosed. Now, this suggestion that it is an oblique way of undertaking to interfere with his method of putting in his case is not sound. We may see those documents, we may examine them, we may purpose putting them in, but we can not put them in except upon cross-examination of the witnesses Mr. Ballinger chooses to call, and we should have a right to put them in if they appear to be relevant and of a nature to aid the committee in the prosecution of its inquiry.

Now, I want, in the third place, to call the attention of the committee to the extraordinary reversal of the attitude taken by Mr. Ballinger in this respect. When this investigation was begun, or even a few days before the first hearing, Mr. Ballinger was so solicitous of not hampering in any way the action of this committee that he did not wish even to be represented by counsel lest the representation by counsel might be deemed in some way to place an obstacle

in the way of the pursuit of the truth. He said at that time, most specifically, how ready he was that all that the committee might call for should be disclosed. In the letter of January 22 to the chairman of this committee, he said:

I beg to further state to the committee that the records, books, documents, and papers in the department, or any of its bureaus, as well as my personal letters and files, are all freely at its service for the purposes of this investigation, and also the time of any officers or employees who may be supposed to have knowledge concerning the matters under investigation, and that I hold myself ready to appear before it at any time to testify personally as a witness, or to give it information in my official capacity, or otherwise.

On February 3, when Secretary Ballinger announced that, in compliance with the wishes of the committee, he would consult counsel and would be represented by counsel, he took care to say again:

I did not wish to be placed in the position of imposing any check or obstacle to the free and full investigation of the conduct of myself or any officer of my department, nor examination of any records which the committee might desire me to have. I still adhere to that position.

Now, I submit, Mr. Chairman, that the position that Secretary Ballinger has taken in those two letters of the 29th and 31st of March, to which I refer, is in direct conflict with the position which he announced at the outset, with the position which he reiterated when he employed counsel, and with the rights, the reasonable method of conducting this investigation, and the proceedings at the last hearing. Take, for instance, the case of Miss Shartell's examination. There was a statement that she had prepared, which I called for in ample time in advance of that hearing, to have had it, but I did not have it, and whatever use could be made of it properly as a result of a study was curtailed by reason of not seeing it until the witness was on the stand. The same is true of the statement made by Mr. Parks, or any other statements which he may have made which we know not of; but the position seems clear that we should have the same unrestricted right now that was recognized earlier of having these documents when we asked for them, and just as quickly as they can be produced from the department, and it was not intended by the committee. The order is clear and explicit that they should be produced to the committee, and that the examination of these by the counsel or Mr. Ballinger should follow and not precede the examination of those who call for them.

Mr. VERTREES. Mr. Chairman and gentlemen, with respect to the motion I wish to say that Mr. Brandeis understands as well as you do that Mr. Ballinger has at no time declined to present copies of documents and original documents when called upon by this committee. The error seems to be that the prosecution seem to conceive themselves to be the committee instead of the committee itself. Now, just here I wish to refer to something which I previously stated. And I refer to it as an answer to the statement that Mr. Ballinger has changed his situation in any respect. I wish to say that he has not done any such thing. This committee will recall that so far as the examination was concerned no objection was interposed—I repeat that—by us to any inquiry which was made, without regard to its nature, whether it was hearsay, or direct evidence, or inference, it all went; that is, while they were presenting those matters which they said tended to prove that Mr. Ballinger had been unfaithful as an official. I think the committee will also bear witness that since

we began the presentation of our evidence the examination has not been on those lines. That which we have presented has been direct evidence, such evidence as would pass under the rules of law. I do not refer to the breadth and reach of the cross-examination. Now, during the long time that the matter was under inquiry, and while legally it was an inquiry of this committee, yet it seems to have been approached on the other side as if it were their inquiry and as if they had charge, to do pretty much what they pleased, not only in the matter of calls for evidence and the presentation of evidence, but in the way they would do it. No objection was made by us. Now, finally, when the matter was closed, then we did consider that there was a situation in which we had a right to call a halt. Up to that time every demand for a document had been met. There was no document that had been called for that was in the possession of any of the bureaus of the department that was not presented. We were fortunate enough even to find some that had been concealed and presented them. But they were presented to every demand that was made. Now, when they rested, when they had come here with the statement that they had certainly found things which they wished to present to this committee, without any charges, we felt that when they had done all that and had got down to the point then where that which we said contradicted and refuted all that should be presented, that the time had come to call a halt on this question of annoying the department with calls for papers, I say Mr. Ballinger said, and I desire to read that again, as expressing his idea about the matter; he said:

As the prosecution has rested and as all papers heretofore called for have been furnished, it is respectfully submitted that demands upon this department for records made hereafter should not be allowed unless (1) they relate to some matter to which the evidence now being presented in my behalf relates and which records have not heretofore been presented, (2) or the nature of the evidence desired be set out, together with a statement of what those records will show, the belief of the applicant that the records will so show, and the names of the informants upon whom the applicant relies for information to support the demands so made.

Now, we had gotten tired of having this man Jones and this man Davis sitting here at Mr. Brandeis's ear and continually suggesting to him something else, something else, something else, when it was plain that the main thing that had been presented to this committee had absolutely failed in all its parts, and we think Mr. Ballinger then had the right to characterize it as a pure fishing process, and it was one to which he submitted, and submitted without a murmur, as long as they were presenting what they said was a case, but the moment that ended we felt that ought to stop. And if after that it was said that there was some paper or something that was needed, they ought to tell why it was needed, and the State it was in, and what they expected to show by it, and that unless that was the case it was subjecting us to a most unreasonable annoyance and the department to a very extraordinary expense. There are bales and bales of these papers practically that have been presented which had nothing in them when found. But it is very easy to sit down at the suggestion of some one who is inclined to do it and call for all manner of papers and all kinds of documents. So we say that we thought the time had come for Mr. Ballinger for a change of that rule and a cessation in the practice. Mr. Ballinger has not said he will produce no papers. On the contrary, he said expressly here that when these witnesses are

examined such papers as relate to their matters will be presented, and presented in their orderly connection.

Senator PURCELL. Let me hear you on this proposition, Mr. Vertrees. Supposing we should adopt the rule suggested there by Mr. Ballinger, is it not a fact that we are placing it in his power to say what shall come here and what shall not come here?

Mr. VERTREES. Senator, in a sense; yes.

Senator PURCELL. Would that be fair?

Mr. VERTREES. Yes, sir; and I will show you why. I said in a sense. As an actual rule, it would not be fair. Now, this investigation is for the purpose of ascertaining the facts, and if at any time in the course of the investigation this committee thinks that there is any particular paper or class of papers that would shed light on the question they will call for them.

Senator PURCELL. Has it not been true that heretofore the committee has always left that matter to the respective attorneys and the department?

Mr. VERTREES. They have.

Senator PURCELL. And when you made a request for papers of course they came, and when he made a request for papers they came.

Mr. VERTREES. I think you will find that when our requests were put in—we have only put in about three—we stated why we wanted them.

Senator PURCELL. You are in a position, independently of requests, to take what you please, but the other party is not.

Mr. VERTREES. I am not on the question of independently, but I am on the question of saying what I expected to prove by them, and what they were. That is the point I am on. Now, answering your question further, I think the suggestion overlooks the fact that through all these weeks and weeks no such position has been taken. They not only were here in the attitude in which they presented them, but they had at their elbows men who had been in the department for years and years.

Senator PURCELL. You have also.

Mr. VERTREES. I am not on what I have got. I am on what they have got. Yes, sir; we have, and we propose to present here these men and everyone of these papers.

Mr. McCALL. Mr. Vertrees, what is the objection to permitting Mr. Brandeis to go fishing—to use the expression of Mr. Ballinger? Of course, we will recognize the fish when it is brought in, but what we are doing is that we are trying to find certain facts with regard to the Interior Department.

Mr. VERTREES. Now, for example, they call for this, that, and the other. I mention the matter that we did not start out with at all, but the matter at Chicago—the Perkins matter. There is an illustration. Of course, we will have these other witnesses here, but I think it shows on its face already, as far as Mr. Ballinger is concerned. Now, our objection is two-fold; the annoyance and the expense. I speak of the annoyance, meaning the annoyance to us in breaking the orderly presentation of the matter. We have not said that these are our records, or that they were private papers. Mr. Ballinger has said all the time that he would present every paper that is called for, but here is a general sweeping call for a whole lot of papers bearing

on everything, and after they have rested, and not trying to prove anything, but with the sole purpose of interfering with us.

Senator PURCELL. That is passing judgment, practically, upon the integrity of counsel, by saying "I determine what he wants those papers for." There may be many papers necessary to the proper cross-examination of your witnesses.

Mr. GRAHAM. Mr. Vertrees, will you let me submit a proposition to you? Of course, as a lawyer, you would at once recognize the impossibility of fairly cross-examining a witness relative to papers that were offered at the time, and which the cross-examiner then saw for the first time. As a lawyer you know that is impossible. Now, would it let us out of the difficulty if, when these papers are offered, the witness should be detained until Mr. Brandeis or counsel on that side had time to investigate and examine the papers, and then, after a lapse of a reasonable time, cross-examine on that? That would give you the opportunity of producing them at the first instance.

Mr. VERTREES. Such a detention as that, of course, as in the case you suggest, would of course result in inconvenience to the committee, but it seems to me that during all these weeks, as to all these papers which were deemed relevant, they should know exactly what they were driving at and what they wanted. They could have called for all those papers.

Mr. GRAHAM. I do not know about that. If their minds are constructed like mine, they never could carry in their minds the knowledge of all the papers in the department, and unless they had the liberty of going to the department files freely, without reserve, and picking out from the files such papers as they wanted, it seems to me they would be handicapped.

Mr. VERTREES. Mr. Graham, do you not recall that they were given that very permission, and time after time have gone down there and examined the documents?

Mr. GRAHAM. No; I understood on the other hand that they had only the liberty to examine such papers as were brought up and put in the hands of the clerk of this committee.

Mr. VERTREES. You are in error as to that. They have been to the department under the rule, as stated, and they have been there without—

Mr. GRAHAM. Freely and without limitation?

Mr. VERTREES. No, sir; not without limitation. It was said that there were those things that related to other matters—no, sir; there was no limitation upon counsel.

Mr. MADISON. Do you say, then, that Mr. Brandeis has the right to-day to go down to the Department of the Interior and ask for this correspondence between Christensen and the department, and to see it, and also all other matters?

Mr. VERTREES. If he will give us a reason why he wants to see it and what he expects to show about it, we will let him see everything down there, except so far as Christensen is concerned. In point of fact, Mr. Christensen is here to-day with it at this hour and will submit it.

Mr. GRAHAM. I think you misconceive the situation. As I see it, the committee does not take the view you have been expressing; at least I, as a member of the committee, do not. It is only the question of the prosecution and defense, and the prosecution has not

closed—if you call it by that name—but that the matter is as open now to renew the original investigation as it was the day the committee first convened, and that you, on the one hand, and Mr. Brandeis and Mr. Pepper, on the other, are mere arms of the committee—conveniences, rather, for the committee, which the committee uses in getting at what it wants—and that the committee would and should go into any of these matters in an original way or at any other time in the future regardless of any question of closing or beginning. I may be wrong, but that is my individual view of the situation.

Mr. VERTREES. I do not question the power of the committee.

Mr. DENBY. Mr. Vertrees, do you wish to make any further statement?

Mr. VERTREES. No, sir.

Mr. DENBY. I wish, in order to bring the matter to a conclusion, to make a motion, but I do not want to cut you off, Mr. Vertrees. Mr. Chairman, I move that the chairman of the committee notify the Secretary of the Interior, either by telephone or in writing, that, with due regard to the necessities of the department in the way of speed, he produce the papers that have been called for as early as may be convenient.

Senator PURCELL. Make the motion so as to cover the other papers.

Mr. DENBY. The papers that have been called for—

Senator PURCELL. Or that hereafter will be called for.

Mr. DENBY. Or that may be hereafter called for.

Senator PURCELL. I second the motion.

Senator SUTHERLAND. Before the motion is put I would like to make a suggestion. I think we have been drifting a long way from the original purpose of having counsel in this inquiry. The joint resolution provides that any witness—not any witness, but any person—whose conduct is under investigation may appear by counsel. We have no counsel here representing the prosecution or counsel representing the defense in that sense, but counsel here represent the witnesses and the committee itself is conducting the inquiry. Counsel are not conducting it except as they represent those persons whose conduct is under investigation, and I think it is the duty of the committee to exercise some judgment about those papers that have been called for. I have no doubt in the world that we have called for thousands of pages in these documents that have been brought in that will shed absolutely no light upon this inquiry, and the committee itself, if it had made inquiry in the beginning, would have discovered that fact. I have been looking over these requests that are now under consideration—this request for the daily reports of Mr. Christensen. I can not conceive how it is possible that that would shed any light on the situation.

Mr. BRANDEIS. Those, Senator Sutherland, have all been produced. You will see a letter on the next page. There has been no objection to it.

Senator SUTHERLAND. No matter whether there is objection to it or not, I am simply speaking of it by way of illustration. Here is the request for all the daily reports of Chief of Division Christensen from August 1, 1909. I can not conceive that any of those daily reports will throw any light on this inquiry except those within the week or two when Mr. Christensen's conduct is under inquiry.

Mr. BRANDEIS. I think, Senator, when the investigation develops that you will see that that is not at all the fact.

Senator SUTHERLAND. I can not conceive how it is possible that Mr. Christensen's daily reports, after the discovery of these papers—if they were discovered in this box—can shed any light whatever upon the question we are investigating, but I can see that some of these matters that are called for now might throw some light on the inquiry. I think that there are a good many of them that do not at all.

Mr. JAMES. Do you not think, Senator, that it would be better, from the standpoint of this being investigated, for us to bring every paper from the department rather than keep one away that is requested?

Senator SUTHERLAND. Of course the committee will not undertake to bring papers here that could not possibly have any reference to the question we are investigating.

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Mr. VERTREES. If you will allow me to suggest, he calls here for many papers since the investigation began—correspondence between these people—

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Mr. VERTREES. The office has practically done nothing but make copies for some time.

Senator SUTHERLAND. I call for the question.

The CHAIRMAN. Before putting the question on the motion, I want to call the attention of the committee to this letter on page 2519—Mr. Brandeis's special call. I ask the committee to look at that letter. I have received the following letters in reply to that, which are not in the record. They have just come this morning, or since our last meeting. Does the committee care to hear those replies now in response to that letter, which appears, as I have stated, on page 2519?

Mr. DENBY. Mr. Chairman, would it not be better, with regard to those replies, to go into that matter when these witnesses are called? I presume they will all be called.

The CHAIRMAN. No; if you will read that letter you will see that it is of a different character.

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1. Mr. Lawler, in his letter of March 23rd, 1910 (testimony 2111), replies merely that "all matter in my personal or official possession coming within the purview thereof" (my letter) "was turned over to Mr. Carr, private secretary to Secretary Ballinger, and transmitted as requested." Mr. Lawler has omitted to comply with the request in the "second" paragraph of my letter of March 21, 1910 (testimony 2109), in which he is "requested to make written reply whether, in addition to the documents produced, they have knowledge of any other such letters, telegrams, papers, or memoranda not now available for production, and if so what such other documents are."

Will you kindly ask Mr. Lawler to reply specifically and fully to that inquiry?

2. Mr. Dennett, in his letter of March 25th, 1910 (testimony 2112), states that "all letters, telegrams, etc., from myself to either of said persons named therein, or from either of said persons to myself, relating to the Cunningham claims or the so-called Glavis charges, made or dictated prior to September 20, 1909, and not contained in Senate Document 248, I have been able to find have been forwarded to the joint committee, and I have no recollection of the contents of any other letters, telegrams, etc., if any such there may have been, that are not now available for production." Mr. Dennett has confined his reply to letters and telegrams (and, I assume, memoranda and papers) from himself to persons named, and from persons named to himself. My inquiry called also for memoranda and papers, "whether official or personal, made, dictated, or prepared by them or any of them, in whole or in part," and is not confined to papers or memoranda sent to or received from the persons named. Mr. Dennett's reply denies "recollection of the contents of any other letters, telegrams, etc." My inquiry of March 21, 1910 (testimony 2109), requests him to "reply whether in addition to the documents produced" he has "knowledge of any other such letters, telegrams, papers, or memoranda," and it does not inquire merely as to his recollection of the contents of such other letters.

Will you please request Mr. Dennett to make further reply in view of the above?

3. Mr. Finney's letter of March 22, 1910 (testimony 2112), states that he has "not in my possession originals or copies, nor can I find on file any originals or copies of any such letters, telegrams, memoranda, or papers, of, from, or to, or made by me, addressed to the persons named in said letter of March 5, or by any of them addressed to me." Mr. Finney also limits his reply to letters, telegrams, memoranda, and papers addressed by any of the persons named to him, or by him addressed to them. My letter of March 21, 1910 (testimony 2109), did not so confine the papers requested, but extended to any papers relating to the Cunningham claims or the Glavis charges made, dictated, or prepared by him in whole or in part. Mr. Finney wholly omits to answer paragraph 2 of my letter of March 21, 1910, in which I inquire whether he has recollection of any other letters telegrams, papers, or memoranda not already produced.

Will you please ask Mr. Finney to make further reply in view of the above?

4. Mr. Carr in his letter of March 24, 1910 (testimony 2113), states that his previous reply "was meant to include all correspondence, memoranda, telegrams, etc., which I received from or addressed to any or all of the persons mentioned in said requests." My letter of March 21, 1910 (testimony 2109), was not so limited.

Will you please request Mr. Carr to make full and explicit reply as requested in my letter of the 21st?

Second. I respectfully request you also to have Mr. F. W. Clements make reply to my letter of March 21, 1910, as if his name was included therein with Messrs. Ballinger, Dennett, Schwartz, Lawler, Finney, Carr, Murphy, and McEniry.

Very respectfully,

LOUIS D. BRANDEIS.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, April 7, 1910.

Hon. KNUTE NELSON,
Chairman Joint Committee of Congress,
Room 210, Senate Office Building.

SIR: On March 5, 1910, Mr. Louis D. Brandeis, attorney, requested:

"Also originals (and so far as originals are not available, copies) of all other letters, telegrams, and memoranda and papers of, from or to, or made by Messrs. Ballinger, Dennett, Schwartz, Lawler, Finney, or Carr, dated, written, or made prior to September 20, 1909, not contained in Senate Document 248 relating to the Cunningham claims or the so-called Glavis charges, including among others, all papers or memoranda submitted by them or any of them to the President or to the Attorney-General."

And on March 21, 1910:

"That Messrs. Ballinger, Dennett, Schwartz, Lawler, Finney, Carr, Murphy, and McEniry, and each of them, be requested to produce to this committee originals (and so far as originals are not available, copies) of all letters, telegrams, memoranda, and papers, whether official or personal, relating to the Cunningham claims or the so-called Glavis charges, sent or received by any of them, respectively, or made, dictated, or prepared by them, or any of them, respectively, in whole or in part, prior to September 20, 1909, and which are not contained in Senate Document No. 248 or already produced by them to your committee in pursuance of previous calls, meaning to include, among others, all papers or memoranda submitted by them, or any of them, to or prepared by them, or any of them, in whole or in part, for the President, his private secretary, or other assistant, or the Attorney-General, or any assistant, and all communications received from the President, his secretary, or any assistant, or the Attorney-General, or any assistant."

And on March 29, 1910, Mr. Brandeis states:

"Mr. Dennett has confined his reply to letters and telegrams (and, I assume, memoranda and papers) from himself to persons named, and from persons named to himself. My inquiry called also for memoranda and papers, 'whether official or personal, made, dictated, or prepared by them or any of them, in whole or in part,' and is not confined to papers or memoranda sent to or received from the persons named. Mr. Dennett's reply denies 'recollection of the contents of any other letters, telegrams, etc.' My inquiry of March 21, 1910 (testimony 2109), requests him to 'reply whether in addition to the documents produced' he has 'knowledge of any other such letters, telegrams, papers or memoranda,' and it does not inquire merely as to his recollection of the contents of such other letters."

I now have to advise you that I have no letters, telegrams, memoranda or papers, whether official or personal, described in the above communications, which are not contained in Senate Document 248, or already produced to your committee; nor have I any present knowledge of any such letters, telegrams, memoranda, and papers that are not now available.

Very respectfully,

FRED DENNETT, *Commissioner*.

THE SECRETARY OF THE INTERIOR,
Washington, April 8, 1910.

SIR: Referring to your letter of the 30th ultimo, I transmit herewith communications from Messrs. Lawler, Clements, Finney, Carr, and McEniry, which are self-explanatory.

Very truly, yours,

R. A. BALLINGER, *Secretary*.

HON. KNUTE NELSON,
Chairman Joint Investigating Committee, United States Senate.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE ASSISTANT ATTORNEY-GENERAL,
Washington, March 31, 1910.

HON. KNUTE NELSON,
*Chairman Joint Committee,
Washington, D. C.*

MY DEAR SENATOR: I am in receipt, by reference from the Secretary, of copy of communication of March 29, 1910, from Louis D. Brandeis, in which the following appears:

"Mr. Lawler, in his letter of March 23, 1910 (testimony, 2111), replies merely that all matter in my personal or official possession coming within the purview thereof (my letter) 'was turned over to Mr. Carr, private secretary to Secretary Ballinger, and transmitted as requested.' Mr. Lawler has omitted to comply with the request in the 'second' paragraph of my letter of March 21, 1910 (testimony, 2109), in which I am requested to make written reply whether in addition to the documents produced they have knowledge of any other such letters, telegrams, papers, or memoranda not now available for production, and if so, what such other documents are."

"Will you kindly ask Mr. Lawler to reply specifically and fully to that inquiry." I have heretofore fully and completely responded to all requests for the production of documents in my possession or under my control. If, however, there are any

closed—if you call it by that name—but that the matter is as open now to renew the original investigation as it was the day the committee first convened, and that you, on the one hand, and Mr. Brandeis and Mr. Pepper, on the other, are mere arms of the committee—conveniences, rather, for the committee, which the committee uses in getting at what it wants—and that the committee would and should go into any of these matters in an original way or at any other time in the future regardless of any question of closing or beginning. I may be wrong, but that is my individual view of the situation.

Mr. VERTREES. I do not question the power of the committee.

Mr. DENBY. Mr. Vertrees, do you wish to make any further statement?

Mr. VERTREES. No, sir.

Mr. DENBY. I wish, in order to bring the matter to a conclusion, to make a motion, but I do not want to cut you off, Mr. Vertrees. Mr. Chairman, I move that the chairman of the committee notify the Secretary of the Interior, either by telephone or in writing, that, with due regard to the necessities of the department in the way of speed, he produce the papers that have been called for as early as may be convenient.

Senator PURCELL. Make the motion so as to cover the other papers.

Mr. DENBY. The papers that have been called for—

Senator PURCELL. Or that hereafter will be called for.

Mr. DENBY. Or that may be hereafter called for.

Senator PURCELL. I second the motion.

Senator SUTHERLAND. Before the motion is put I would like to make a suggestion. I think we have been drifting a long way from the original purpose of having counsel in this inquiry. The joint resolution provides that any witness—not any witness, but any person—whose conduct is under investigation may appear by counsel. We have no counsel here representing the prosecution or counsel representing the defense in that sense, but counsel here represent the witnesses and the committee itself is conducting the inquiry. Counsel are not conducting it except as they represent those persons whose conduct is under investigation, and I think it is the duty of the committee to exercise some judgment about those papers that have been called for. I have no doubt in the world that we have called for thousands of pages in these documents that have been brought in that will shed absolutely no light upon this inquiry, and the committee itself, if it had made inquiry in the beginning, would have discovered that fact. I have been looking over these requests that are now under consideration—this request for the daily reports of Mr. Christensen. I can not conceive how it is possible that that would shed any light on the situation.

Mr. BRANDEIS. Those, Senator Sutherland, have all been produced. You will see a letter on the next page. There has been no objection to it.

Senator SUTHERLAND. No matter whether there is objection to it or not, I am simply speaking of it by way of illustration. Here is the request for all the daily reports of Chief of Division Christensen from August 1, 1909. I can not conceive that any of those daily reports will throw any light on this inquiry except those within the week or two when Mr. Christensen's conduct is under inquiry.

Mr. BRANDEIS. I think, Senator, when the investigation develops that you will see that that is not at all the fact.

Senator SUTHERLAND. I can not conceive how it is possible that Mr. Christensen's daily reports, after the discovery of these papers—if they were discovered in this box—can shed any light whatever upon the question we are investigating, but I can see that some of these matters that are called for now might throw some light on the inquiry. I think that there are a good many of them that do not at all.

Mr. JAMES. Do you not think, Senator, that it would be better, from the standpoint of this being investigated, for us to bring every paper from the department rather than keep one away that is requested?

Senator SUTHERLAND. Of course the committee will not undertake to bring papers here that could not possibly have any reference to the question we are investigating.

Mr. JAMES. I understand that.

Mr. VERTREES. If you will allow me to suggest, he calls here for many papers since the investigation began—correspondence between these people—

Mr. JAMES. Still that might throw some light on it.

Mr. VERTREES. That is true; but I was just on the question of the extreme burden on the department. I agree that as a fishing proposition it might.

Mr. JAMES. Well, you can fish, but it does not hurt anything without you catch something.

Mr. VERTREES. The office has practically done nothing but make copies for some time.

Senator SUTHERLAND. I call for the question.

The CHAIRMAN. Before putting the question on the motion, I want to call the attention of the committee to this letter on page 2519—Mr. Brandeis's special call. I ask the committee to look at that letter. I have received the following letters in reply to that, which are not in the record. They have just come this morning, or since our last meeting. Does the committee care to hear those replies now in response to that letter, which appears, as I have stated, on page 2519?

Mr. DENBY. Mr. Chairman, would it not be better, with regard to those replies, to go into that matter when these witnesses are called? I presume they will all be called.

The CHAIRMAN. No; if you will read that letter you will see that it is of a different character.

Mr. MADISON. It is a pretty long letter.

The CHAIRMAN. If not, I can have them printed, but I suggest they ought to be printed immediately following that letter. That letter and these letters in reply ought to go together.

Mr. JAMES. Let that letter be reprinted and these follow.

The CHAIRMAN. If there is no objection, that will be done. The letter on page 2519 will be reprinted, together with this bunch of letters in response to it. It is the second letter dated March 29, 1910.

(The letters are as follows:)

WASHINGTON, March 29, 1910.

Hon. KNUTE NELSON,
Chairman Joint Committee of Congress,
Washington, D. C.

DEAR SIR: First. Referring to letters of Messrs. Lawler, Dennett, Finney, and Carr, transmitted with Secretary Ballinger's letter to you of March 25th, 1910 (testimony 2111), will you have the kindness to call the attention of the Secretary and the several gentlemen to the following and to request further replies from them?

1. Mr. Lawler, in his letter of March 23rd, 1910 (testimony 2111), replies merely that "all matter in my personal or official possession coming within the purview thereof" (my letter) "was turned over to Mr. Carr, private secretary to Secretary Ballinger, and transmitted as requested." Mr. Lawler has omitted to comply with the request in the "second" paragraph of my letter of March 21, 1910 (testimony 2109), in which he is "requested to make written reply whether, in addition to the documents produced, they have knowledge of any other such letters, telegrams, papers, or memoranda not now available for production, and if so what such other documents are."

Will you kindly ask Mr. Lawler to reply specifically and fully to that inquiry?

2. Mr. Dennett, in his letter of March 25th, 1910 (testimony 2112), states that "all letters, telegrams, etc., from myself to either of said persons named therein, or from either of said persons to myself, relating to the Cunningham claims or the so-called Glavis charges, made or dictated prior to September 20, 1909, and not contained in Senate Document 248, I have been able to find have been forwarded to the joint committee, and I have no recollection of the contents of any other letters, telegrams, etc., if any such there may have been, that are not now available for production." Mr. Dennett has confined his reply to letters and telegrams (and, I assume, memoranda and papers) from himself to persons named, and from persons named to himself. My inquiry called also for memoranda and papers, "whether official or personal, made dictated, or prepared by them or any of them, in whole or in part," and is not confined to papers or memoranda sent to or received from the persons named. Mr. Dennett's reply denies "recollection of the contents of any other letters, telegrams, etc." My inquiry of March 21, 1910 (testimony 2109), requests him to "reply whether in addition to the documents produced" he has "knowledge of any other such letters, telegrams, papers, or memoranda," and it does not inquire merely as to his recollection of the contents of such other letters.

Will you please request Mr. Dennett to make further reply in view of the above?

3. Mr. Finney's letter of March 22, 1910 (testimony 2112), states that he has "not in my possession originals or copies, nor can I find on file any originals or copies of any such letters, telegrams, memoranda, or papers, of, from, or to, or made by me, addressed to the persons named in said letter of March 5, or by any of them addressed to me." Mr. Finney also limits his reply to letters, telegrams, memoranda, and papers addressed by any of the persons named to him, or by him addressed to them. My letter of March 21, 1910 (testimony 2109), did not so confine the papers requested, but extended to any papers relating to the Cunningham claims or the Glavis charges made, dictated, or prepared by him in whole or in part. Mr. Finney wholly omits to answer paragraph 2 of my letter of March 21, 1910, in which I inquire whether he has recollection of any other letters, telegrams, papers, or memoranda not already produced.

Will you please ask Mr. Finney to make further reply in view of the above?

4. Mr. Carr in his letter of March 24, 1910 (testimony 2113), states that his previous reply "was meant to include all correspondence, memoranda, telegrams, etc., which I received from or addressed to any or all of the persons mentioned in said requests." My letter of March 21, 1910 (testimony 2109), was not so limited.

Will you please request Mr. Carr to make full and explicit reply as requested in my letter of the 21st?

Second. I respectfully request you also to have Mr. F. W. Clements make reply to my letter of March 21, 1910, as if his name was included therein with Messrs. Ballinger, Dennett, Schwartz, Lawler, Finney, Carr, Murphy, and McEniry.

Very respectfully,

LOUIS D. BRANDEIS.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, April 7, 1910.

HON. KNUTE NELSON,
Chairman Joint Committee of Congress,
Room 210, Senate Office Building.

SIR: On March 5, 1910, Mr. Louis D. Brandeis, attorney, requested:

"Also originals (and so far as originals are not available, copies) of all other letters, telegrams, and memoranda and papers of, from or to, or made by Messrs. Ballinger, Dennett, Schwartz, Lawler, Finney, or Carr, dated, written, or made prior to September 20, 1909, not contained in Senate Document 248 relating to the Cunningham claims or the so-called Glavis charges, including among others, all papers or memoranda submitted by them or any of them to the President or to the Attorney-General."

And on March 21, 1910:

"That Messrs. Ballinger, Dennett, Schwartz, Lawler, Finney, Carr, Murphy, and McEniry, and each of them, be requested to produce to this committee originals (and so far as originals are not available, copies) of all letters, telegrams, memoranda, and papers, whether official or personal, relating to the Cunningham claims or the so-called Flavis charges, sent or received by any of them, respectively, or made, dictated, or prepared by them, or any of them, respectively, in whole or in part, prior to September 9, 1909, and which are not contained in Senate Document No. 248 or already produced by them to your committee in pursuance of previous calls, meaning to include, among others, all papers or memoranda submitted by them, or any of them, to or prepared by them, or any of them, in whole or in part, for the President, his private secretary, or other assistant, or the Attorney-General, or any assistant, and all communications received from the President, his secretary, or any assistant, or the Attorney-General, or any assistant."

And on March 29, 1910, Mr. Brandeis states:

"Mr. Dennett has confined his reply to letters and telegrams (and, I assume, memoranda and papers) from himself to persons named, and from persons named to himself. My inquiry called also for memoranda and papers, 'whether official or personal, made, dictated, or prepared by them or any of them, in whole or in part,' and is not confined to papers or memoranda sent to or received from the persons named. Mr. Dennett's reply denies 'recollection of the contents of any other letters, telegrams, etc.' My inquiry of March 21, 1910 (testimony 2109), requests him to 'reply whether in addition to the documents produced' he has 'knowledge of any other such letters, telegrams, papers or memoranda,' and it does not inquire merely as to his recollection of the contents of such other letters."

I now have to advise you that I have no letters, telegrams, memoranda or papers, whether official or personal, described in the above communications, which are not contained in Senate Document 248, or already produced to your committee; nor have I any present knowledge of any such letters, telegrams, memoranda, and papers that are not now available.

Very respectfully,

FRED DENNETT, *Commissioner.*

THE SECRETARY OF THE INTERIOR,
Washington, April 8, 1910.

SIR: Referring to your letter of the 30th ultimo, I transmit herewith communications from Messrs. Lawler, Clements, Finney, Carr, and McEniry, which are self-explanatory.

Very truly, yours,

R. A. BALLINGER, *Secretary.*

HON. KNUTE NELSON,
Chairman Joint Investigating Committee, United States Senate.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE ASSISTANT ATTORNEY-GENERAL,
Washington, March 31, 1910.

HON. KNUTE NELSON,
*Chairman Joint Committee,
Washington, D. C.*

MY DEAR SENATOR: I am in receipt, by reference from the Secretary, of copy of communication of March 29, 1910, from Louis D. Brandeis, in which the following appears:

"Mr. Lawler, in his letter of March 23, 1910 (testimony, 2111), replies merely that 'all matter in my personal or official possession coming within the purview thereof' (my letter) 'was turned over to Mr. Carr, private secretary to Secretary Ballinger, and transmitted as requested.' Mr. Lawler has omitted to comply with the request in the 'second' paragraph of my letter of March 21, 1910 (testimony, 2109), in which he is 'requested to make written reply whether in addition to the documents produced they have knowledge of any other such letters, telegrams, papers, or memoranda not now available for production, and if so, what such other documents are.'"

"Will you kindly ask Mr. Lawler to reply specifically and fully to that inquiry."

I have heretofore fully and completely responded to all requests for the production of documents in my possession or under my control. If, however, there are any

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specific writings supposed to be in my possession or control which have not been produced (and there are none to my knowledge), I shall be glad to respond to a request therefor.

In so far as the request referred to calls for a statement of facts which are, or may be supposed to be, within my knowledge, I shall, of course, hold myself subject to the convenience of the committee should it desire my testimony in regard thereto.

Very respectfully,

OSCAR LAWLER,
Assistant Attorney-General.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE ASSISTANT ATTORNEY-GENERAL,
Washington, April 1, 1910.

HON. KNUTE NELSON,
*Chairman Joint Committee of Congress,
United States Senate.*

SIR: Responding to your letter of the 30th ultimo, I have to advise you that I have no knowledge of what has heretofore been introduced by way of documents, memoranda, etc., in connection with the investigation of the Interior Department and the Forestry Bureau, now in course of hearing before your committee, not having read the minutes of such hearing.

I furnished Mr. First Assistant Secretary Pierce with a memorandum, dated August 30, 1909, bearing upon the preparation of the opinion signed by him May 19, 1908, construing the act of May 28, 1908 (35 Stat., 424), which, I am informed, is already in the record.

I do not now recall having prepared in whole or in part any other memorandum, paper, or letter, official or personal, relating to the Cunningham claims, or the so-called Glavis charges, and have no knowledge of any such papers not now available for production.

Very respectfully,

F. W. CLEMENTS, *First Assistant Attorney.*

DEPARTMENT OF THE INTERIOR,
Washington, March 31, 1910.

HON. KNUTE NELSON,
Chairman Joint Committee of Congress.

SIR: In reply to letter of Mr. Louis D. Brandeis, dated March 29, 1910, requesting further statement from me with reference to papers, letters, telegrams, or memoranda relating to the Cunningham claims or the Glavis charges, and alleging that my reply to his letter of March 21, 1910, does not fully meet the request contained therein, I have the honor to advise you that I have not in my possession, nor have I been able to find in the files, any papers, letters, telegrams, or memoranda by, to, or from myself or any of the parties named, or any other papers relating to the matter at issue, which have not already been furnished. I have no recollection whatever of any matters written by me during the period specified to any of the parties named which have not been produced and filed with your committee, except that I do recollect of having furnished First Assistant Secretary Pierce with a memorandum containing a list of the Cunningham coal entries, which data I secured from the files of the General Land Office. This data is printed on page 175, Senate Document 248. I also furnished Mr. Pierce with a memorandum of facts within my knowledge relating to the Cunningham cases for his use in preparing the letter he addressed to the President on September 1, 1909, pages 171 et seq. of Senate Document 248. Both the papers in question were what may be called unofficial memoranda and were doubtless thrown in the waste basket after he had finished with them. This is the only recollection I have concerning any papers whatever such as described by Mr. Brandeis.

Very respectfully,

E. C. FINNEY, *Assistant to the Secretary.*

THE SECRETARY OF THE INTERIOR,
Washington, April 8, 1910.

SIR: Supplementing my letters of March 15 and 24 to you, I beg to say that I have no knowledge or recollection of any correspondence, memoranda, or telegrams, etc., relating to the Cunningham claims or the so-called Glavis charges which I have received from or addressed to any or all of the persons mentioned in the several requests of Mr. Brandeis other than that heretofore furnished.

Very truly yours,

DON M. CARR, *Private Secretary.*

THE SECRETARY OF THE INTERIOR.

712-14 E. & C. BUILDING,
Denver, Colo., March 28, 1910.

DEAR MR. SECRETARY: Referring to Senator Nelson's communication of March 22 relative to papers and correspondence from me promised in your letter of March 12, I have the honor to advise you with respect to same that I have neither original nor copy of any letter, telegram, memorandum, etc., addressed to me, or from me to either yourself, Messrs. Dennett, Schwartz, Lawler, Finney, Carr, or Murphy relative to the Cunningham coal claims or the so-called Glavis charges; nor have I any knowledge of the existence of any such letters, telegrams, papers or memoranda which are not contained in Senate Document No. 248 or already placed before the committee.

Very respectfully,

M. D. MCENIRY,
Chief Fifth Field Division.

HON. RICHARD A. BALLINGER,
Secretary of the Interior, Washington, D. C.

The CHAIRMAN. Mr. Denby, will you please repeat your motion?

Mr. DENBY. My motion is that the chairman of the committee notify the Secretary of the Interior, either by telephone or letter, to produce all papers that are called for or that may be called for, except those which, in his judgment, it may be detrimental to the public service to produce, and upon that question we will pass.

Mr. VERTREES. Will you allow me to make this suggestion? The committee has heretofore ruled with reference to those subjects in which the documents were very voluminous. I suggest that instead of making a rule of that character they should be allowed to inspect them, to see if all of them were wanted.

Mr. DENBY. You mean inspect them at the department?

Mr. VERTREES. At the department.

Mr. DENBY. I think that counsel should not object to that procedure.

Senator FLETCHER. The motion might be that the department be requested to notify the Secretary to produce the letters in accordance with the course heretofore followed by the committee. That would cover Mr. Vertrees's objection.

Mr. BRANDEIS. I think, as a matter of fact, there has been only one objection when the papers were very voluminous. The matter was then called to the attention of the committee, and by the committee to the attention of counsel, and we called at the department to examine them. The conditions when we examined them were not as favorable as those under which we examined them here, because Mr. Garfield and I called there, and we were put into Mr. Lawler's room, and it was impossible to confer with regard to the matter, because Mr. Lawler was sitting there while we were doing it. It only happened once,

and it was a matter of no concern. If the papers are ever so voluminous the Secretary will call it to our attention, and we would be very glad to go down and examine them.

Mr. DENBY. I move that the Secretary be called upon to produce the letters that have been called for under the usual exceptions which we have heretofore recognized. I do not think it is necessary to add anything to that.

(The motion was agreed to.)

The CHAIRMAN. Mr. Vertrees, are you ready to proceed?

Mr. VERTREES. Mr. Chairman, there are one or two matters that I wish to bring to the attention of the committee. When Mr. O'Neill was examined, he was called upon to produce the affidavit which he had made to Mr. Christensen. One was produced but by inadvertence there was one which was not. I desire to put that in now. The same is true with reference to Miss Shartell. There were several of hers presented, but there ought to have been another, which I find. Then I have in my possession a paper of February 1, 1910, which was given in evidence before, and by inadvertence was taken from the table. It is a letter to Mr. Schwartz by Mr. Christensen. That is a little thing really, but it ought to have been printed. I do not know just how it came to be taken away.

The CHAIRMAN. It will be admitted; there is no use of reprinting those that are already in the record.

Mr. VERTREES. It has not been printed.

The CHAIRMAN. Are all these additional?

Mr. VERTREES. Yes, sir. Miss Shartell had three, I think, printed, but there was a fourth one.

The CHAIRMAN. Very well.

Mr. BRANDEIS. What is the date of this letter from Mr. Christensen to Mr. Schwartz to which you refer?

Mr. VERTREES. I believe that is the one [indicating]. Maybe I am in error about that. Mr. Christensen informs me that I am in error with regard to that letter of February 1. It has not been printed in the record.

Mr. BRANDEIS. You refer merely to the affidavits?

Mr. VERTREES. Yes, sir.

(The papers referred to are as follows:)

STATE OF WASHINGTON, *County of King*, ss:

Andrew Christensen, being first duly sworn, on oath deposes and says:

That I am at the present time occupying the position of chief of the first field division, at Portland, Oreg., and that I have temporary charge of the seventeenth field division, with headquarters at Seattle, Wash.

That on Tuesday, February 8, 1910, while in search of government records and documents required by the Joint Committee of Congress now investigating the General Land Office and Forestry Service, I requested Garrett W. O'Neil, now assistant custodian of the federal building, Seattle, Wash., to accompany me to the grand jury and storage rooms in the building for the purpose of ascertaining whether or not there was any government property or records stored therein. That said O'Neil accompanied me to several rooms, among them being room 405, wherein are stored one box and two barrels labeled "L. R. Glavis," and which contained his personal effects. That we opened said box and barrels and discovered therein the government records enumerated in the attached list, pages 1 to 6, inclusive, which pages bear the initials of myself and said O'Neil. The property listed on page 2 was found in one of the barrels and the property listed on pages 1, 3, 4, 5, and 6 were found in the box. I further swear that the letters listed on page 1, which are a portion of a number of letters received from the Juneau, Alaska, land office, by Special Agent

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Arthur R. Bowman, in August, 1909. That I had no knowledge whatever that they were concealed in said box, which accounts for my failure to produce them in response to a telegram received from H. H. Schwartz, Chief of Field Service, January 31, 1910.

A. CHRISTENSEN.

Subscribed and sworn to before me this 9th day of February, 1910.

RAYMOND E. GERY,
Special Agent, G. L. O.

STATE OF WASHINGTON, County of King, ss:

I, Garrett W. O'Neil, being first duly sworn, depose and say:

That I am at the present time assistant custodian of the federal building at Seattle, Wash. That I have read the foregoing affidavit of Andrew Christensen, and that all of the statements made by him in reference to the finding of the property noted on pages 1 to 6, inclusive, is true to the best of my knowledge and belief. That I assisted said Christensen in opening the boxes and barrels and in examining the contents thereof, and that all of the property as set forth on pages 1 to 6, which bear my initials, were found in the box and barrels containing the personal effects of L. R. Glavis and labeled "L. R. Glavis."

That when Mr. Glavis moved his headquarters to Seattle, Wash., he asked me for the use of the grand-jury room for the purpose of storing certain papers which he wished to arrange some time later in connection with an investigation in Alaska. That, at his request, I gave him a key to one of the grand-jury rooms which at that time was not in use, and Glavis placed therein the barrels and box which Mr. Christensen and myself opened on February 8, 1910. That after Mr. Glavis was removed from the service these barrels and box were removed into room 405, in which they are now located, by Special Agent Andrew Kennedy. That a few days, or possibly a week, after the removal of Glavis from the service, the key to the grand-jury room was returned to me.

Further deponent saith not.

GARRETT W. O'NEIL.

Subscribed and sworn to before me this 9th day of February, 1910.

RAYMOND E. GERY,
Special Agent, G. L. O.

List of original letters and telegrams found by G. W. O'Neill, assistant custodian Federal Building, and A. Christensen in a box belonging to L. R. Glavis, among his personal property in room 405, Federal Building, Seattle, Wash., February 8, 1910.

[Original and two carbons.]

Letter from—	Date.
Clarence Cunningham (two carbons only).....	January 15, 1908.
Clarence Cunningham.....	May 9, 1908.
Do	March 10, 1908.
Do	March 19, 1908.
Do	April 13, 1908.
Do	March 14, 1908.
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Walter M. French.....	April 19, 1909.
R. A. Ballinger.....	December 23, 1908.
Fred Dennett.....	December 17, 1908.

SEATTLE, WASH., February 8, 1910.

A list of papers, letters, books, affidavits, and other government property, found by G. W. O'Neal, assistant custodian federal building, and A. Christensen, in a barrel belonging to L. R. Glavis, among his personal belongings, in room 405, federal building, Seattle, Wash., February 8, 1910:

- No. 1, affidavit of J. Casey, dated October 19, 1904, by L. R. Glavis.
- No. 2, affidavit of L. Stoneman, dated October 18, 1904, by L. R. Glavis.
- No. 3, affidavit of F. S. Langley, dated October 18, 1904, by L. R. Glavis.
- No. 4, affidavit of Peter Pierson, dated October 14, 1904, by L. R. Glavis.
- No. 5, affidavit of Chas. Harris, dated October 19, 1904, by L. R. Glavis.
- No. 6, affidavit of Peter Pierson, dated October 15, 1904, by L. R. Glavis.
- No. 7, affidavit of Chas. Harris, dated October 19, 1904, by L. R. Glavis.
- No. 8, affidavit of B. O. Brown, dated October 9, 1904, by L. R. Glavis.
- No. 9, affidavit of Adam Peabody, dated October 11, 1904, by L. R. Glavis.
- No. 10, affidavit of H. Naughton, dated October 18, 1904, by L. R. Glavis.
- No. 11, affidavit of Joe Foster, dated October 17, 1904, by L. R. Glavis.
- No. 12, affidavit of M. W. Caldwell, dated October 18, 1904, by L. R. Glavis.
- No. 13, affidavit of W. D. Hill, dated October 14, 1904, by L. R. Glavis.
- No. 14, affidavit of John Derr, dated October 13, 1904, by L. R. Glavis.
- No. 15, envelope and papers, marked "Leroy Tucker-171-Awaiting exam. King-ton, Idaho, July 29, 1904, made field exam."
- No. 16, envelope and papers, marked Frank Allen, "Procure Herman Vogle and John Dobbins' affidavits." George Piatt.
- No. 17, personal; returned.
- No. 18, envelope addressed to L. R. Glavis, C. F. D. 310, custom-house, Portland, Oreg. No inclosures.
- No. 19, Rand-McNally map of Washington.
- No. 20, personal; returned.
- No. 21, field notes, G. L. O., 4-671.

A list of letters, papers, books, and other government property found by G. W. O'Neil and A. Christensen in a box belonging to L. R. Glavis among his personal property in room 405 federal building, Seattle, Wash., February 8, 1910:

Roll of legal cap paper, on one sheet of which are notes made in reference to certain cabins.

July Field Program, 1909, Forestry Service.

Copy of The Use Book, 1908, Forestry Service.

Stubs of T. R. Book No. 2721 (L. R. Glavis).

Stubs of T. R. Book No. 307 (L. R. Glavis).

Copy of "U. S. Geological Survey 9-918" containing notes on Alaska and other topics.

Copy of circular entitled "Rules and regulations for the sale of timber upon the unreserved public lands in the District of Alaska," on the margin of which are written some notes.

Personal; returned.

Sheet of paper containing rough draft of letter and other written notes.

Sheet of paper on which are written words and figures.

Two typewritten sheets containing questions to inspectors.

Carbon copy of five sheets typewritten paper containing questions for registers, receivers, and clerks.

One Western Union book of blank forms.

One copy Form 4-620, upon the back of which are written certain notes.

One envelope, on which are written notes.

One copy "Northern Navigation Co.'s lines" time table.

Two blank copies Form 6-142.

One 6-page circular letter, dated Oct. 8, 1907, on the margin of which notes are written.

Three blank copies of Form 4-509.

One manila envelope containing copy of letter from P. O. inspector, dated October 17, 1908.

Letter from Louis H. Arneson to Glavis, dated March 5, 1909.

Book of Western Union blanks.

Copy of letter from E. B. Linnen to Com'r, dated Feb. 16, 1906.

Three copies of typewritten questions to be submitted to registers, receivers, and clerks.

Twenty blank forms, 4-509.
 Two blank forms, 6-142.
 Six blank forms, 4-159.
 Six blank relinquishments.
 Copy of field notes, with entries by Glavis.
 One blank form, 4-585.
 Two receipt books partly used.
 Three blank forms, 6-142.
 Eight blank propositions of settlement.
 One Forest Reserve Manual.
 One "Manual of Surveying Instructions," etc.
 One "Congressional Directory" for December, 1908.
 One "Circular from the General Land Office," 1904 ed.
 One "Congressional Directory" for December, 1906.
 One "Compilation of Public Timber Laws," 1903 ed.
 One unused No. 9 envelope, addressed to Com'r.
 Four blank No. 6 envelopes.
 Four blank No. 9 envelopes.
 One Rand, McNally & Co.'s map of Alaska.
 Rough map of T. 28 N. of R. 2 W.
 Rough map of T. 35 N. of R. 7 E.
 Rough map of T. 34 N. of R. 5 E.
 Rough map of T. 34 N. of R. 7 E.
 Rough map of T. 15 N. of R. 3 E.
 Six sheets of notes on legal cap paper.
 "Daily record," etc., of L. R. Glavis from July 22, 1908, to and including June 4, 1909.
 Notes on case Simpson Lumber Co., names of parties involved, two sheets of paper.
 Blank Form 4-681.
 Circular, "Methods now employed in filing and indexing records in the U. S. surveyor-generals office, Portland, Ore.
 Page torn from notebook, notes re Frank Bramwell.
 Notes on deed of D. L. Steel to his wife Lydia A. Steele.
 Two sheets, Form 4-590, with notes on back of same.
 Notes (3 sheets) on warranty deeds, re Simpson Lumber Co.
 Notes, miscellaneous, one sheet.
 Aff'd William Turpin, re Simpson Lumber Case, by Stephen Norton, special agent, G. L. O., dated June 18, 1908.
 Aff'd J. A. Stemmerman, re Simpson Lumber Co. case, by Stephen Norton, special agent, G. L. O., dated June 22, 1908.
 Notes, one small sheet, miscellaneous.
 One yellow filing card.
 Four sheets, notes on desert-land entries.
 Personal letter Pollard to Glavis, dated July 22, —.
 Three blank forms.
 Receipt from Portland Omnibus Co. to L. R. Glavis.
 Envelope, 3 enclosures, to Mr. J. H. Lutz, c/o Imperial Hotel, Portland, Oregon, returned to writer "C. O. P."
 Voucher No. 125, favor William J. Dunn, by L. R. Glavis.
 Notes re money paid various people, (2 sheets).
 Notes re money paid various people for hearings.
 Carbon copy monthly work sheet field div. No. one, Sept., 08.
 Receipt of Pac. Tel. Co. to L. R. Glavis (\$1) 3-21-08.
 Form 4-665e, to John E. Harper, Narrows, Ore. (\$10.50).
 Letter, Pollard to Glavis, re payment of vouchers.
 List of cash receipts (8 sheets) dated 4-20-08.
 Form 4-665e, J. Clark Freeman, Burns, Ore. (\$10.50).
 Sight draft, Citizens National Bank, Baker City, Horace Tillard Jones to L. R. Glavis.
 Copies of telegrams Glavis to Bowman and Glavis to Clerk dated June 5, 1909, and found in No. 9 envelope.
 Four sheets blank legal cal paper.
 Six blank No. 9 envelopes.
 List of names and addresses inclosed in blue envelope on which is written "Chiropractors of Seattle, Washington."
 Blue print township 6, north of range 19 east.
 Blue print township 8b, north of range 14 east.

Blue print township 5, north of range 18 east.
 Blue print township 6, north of range 17 east.
 Blue print township 3, north of range 19 east.
 Blue print township 6, north of range 18 east.
 Blue print township 4, north of range 19 east.
 Blue print township 5, north of range 19 east.
 Blue print township 6, north of range 19 east.
 Blue print township 12, north of range 5 east.
 Blue print township 13, north of range 6 east.
 Blue print township 14, north of range 6 east.
 Blue print township 12, north of range 6 east.
 Blue print township 14, north of range 5 east.
 Blue print township 13, north of range 5 east.
 One "I-P loose leaf price book" empty.

One "I-P loose leaf price book" containing carbon copies of Glavis' daily reports from Jan. 1, 1909, to June 30, 1909, inc.

Envelope addressed to Charles O. Pollard, special agent.

Signed voucher of James T. Adams account of hearing in U. S. v. Lester W. Shaver.

Signed voucher of John Q. Adams account of hearing in U. S. v. Lester W. Shaver.

Signed voucher of Perry Maupin account of hearings in U. S. v. Lester W. Shaver.

Envelope addressed to Charles C. Pollard.

STATE OF WASHINGTON, *County of King*, ss:

I, Ella M. Shartell, being first duly sworn, on oath depose and say:

That I am now and have been since the 28th day of June, 1909, employed as stenographer in the office of the seventeenth field division of the General Land Office, with headquarters at room 219 federal building, Seattle, Wash. That I made copies of the letters mentioned in the attached list, marked "Exhibit A," and bearing my initials, some time between the 2d day of September and the 14th day of September, 1909. That the copies were made at the request of former Chief of Field Division Glavis, but I am unable, at this time, to state how many copies I made thereof. I do not know what disposition was made of the original letters or the carbons, after they had been copied by myself, and I know nothing of their whereabouts and never saw them from the time I copied them until they were exhibited to me in the office at 219 federal building, on February 8, 1910. That at the time Mr. Glavis gave these letters to me for copying he brought them to me at my desk. That I do not know from what source he received them. That I know a certain investigation has been made for some time concerning the loss of the letters set forth in this list, but that I did not know at the time this investigation was being made that it related to the list which I copied at the request of Mr. Glavis. I did not know at the time I made the copies that they were taken from the satchel belonging to Special Agent Arthur R. Bowman, nor did I know that they were the letters which were received by him from the Juneau, Alaska, land office. That at the time these copies were made I was very busy copying other records for Mr. Glavis; that I frequently came here at night and worked as late as 10 and 11 o'clock, and for that reason I was unable to recall at the time this investigation was being made that I copied the particular letters in question. That Mr. Glavis never informed me for what purpose he desired these copied, and were not, therefore, brought to my attention particularly.

ELLA M. SHARTELL.

Subscribed and sworn to before me this 9th day of February, 1910.

RAYMOND E. GERY,
Special Agent, G. L. O.

INVESTIGATION INTERIOR DEPT. AND BUREAU OF FORESTRY. 2665

List of original letters and telegrams found by S. W. O'Neill, assistant custodian Federal Building, and A. Christensen, in a box belonging to L. R. Glavis, among his personal property in room 405, Federal Building, Seattle, Wash., February 8, 1910.

[Original and two carbons.]

Letter from—	Date.
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Clarence Cunningham.....	May 9, 1908.
Do.....	March 10, 1908.
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Walter M. French.....	April 19, 1909.
R. A. Ballinger.....	December 23, 1908.
Fred Dennett.....	December 17, 1908.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Seattle, Wash., February 1, 1910.

Mr. H. H. SCHWARTZ,
Chief of Field Service, Washington, D. C.

SIR: I have just been informed by United States Attorney Todd that Payson C. Richardson, who has been subpoenaed as witness before the joint committee and who was the prosecuting witness for the Government in the Wilson coal cases, had told him that on Sunday, September 19, 1909, when I made formal demand upon Glavis for certain records which he had refused to deliver to me, said Richardson was at the hotel. Richardson immediately secured a stenographer for Glavis and proceeded to make copies of all the said records, the stenographer and said Richardson working until six o'clock Monday morning. This accounts for Glavis having copies of all of these records. Mr. Richardson maintained to Todd that all of the originals were returned to this office. I do not know whether Glavis had any of the missing letters in his possession at that time. Mr. Todd is of the opinion he did not; that the missing letters were sent to the Forest Service on September 18 with other records sent.

I am calling this matter to your attention so that Mr. Richardson and Mr. Glavis may be cross-examined on this point before the committee and in order that the missing records may be located if possible. Mr. Glavis now has in his possession copies of official records which should only be in possession of the Government, and I believe that action should be taken to secure these copies from him, as they are now being unlawfully retained by him.

I fully realize now that the advice from assistant United States attorney to give Glavis until Monday morning to return the papers was a mistake, but they were in his possession, and the only way I could have gotten possession of them was through a writ of habeas corpus. If I had taken such action, he would immediately have jumped into the newspapers and advertised the fact that the General Land Office was afraid that he had official records that were not proper for publication. It seems, however, that no other action could properly have been taken by myself in order to secure the papers from him.

2666 INVESTIGATION INTERIOR DEPT. AND BUREAU OF FORESTRY.

A list of the papers of which he made copies and which were returned to me at about 9.20 a. m. Monday morning, September 20, are attached herewith. As stated, these papers were returned to me, and I assume he made copies of all of them.

Very respectfully,

A. CHRISTENSEN, *Chief of Field Division.*

EXHIBIT A.

ALASKA COAL CASES.

Letters and telegrams, as follows:

Original letter from Fred Dennett, acting commissioner, to Mr. Horace T. Jones special agent, dated June 21, 1907.

Copy of letter to the honorable commissioner, dated August 10, 1907, by a special agent; copy unsigned.

Copy of letter to honorable commissioner, dated August 13, 1907, by a special agent copy unsigned.

Copy of letter from L. R. Glavis, Chief of Field Division, to Commissioner General Land Office, dated November 12, 1907.

Original letter to Mr. Louis R. Glavis, Chief of Field Division, from Horace Tillar Jones, special agent, dated December 2, 1907.

Original letter from R. A. Ballinger, commissioner, to Mr. Louis R. Glavis, chief of field division, dated December 28, 1907.

Original letter from Clarence Cunningham to the register and receiver United States Land Office, Juneau, Alaska, dated January 15, 1908.

Original letter from H. K. Love, special agent, to Mr. L. R. Glavis, chief of field division, dated January 17, 1908.

Copy of letter to Hon. Oscar Foote, Seattle, Wash.; unsigned; dated March 10, 1908.

Original telegram to Special Agent Glavis from Dennett, commissioner, dated May 2, 1908.

Original telegram from Dennett, commissioner, to Special Agent L. R. Glavis, dated March 10, 1909.

Original telegram from Schwartz, Chief of Field Service, to Special Agent Glavis, dated April 20.

Original telegram from Schwartz, Chief of Field Division, to special Agent Glavis, dated April 24, 1909.

Copy of letter from L. R. Glavis, Chief of Field Division, to Mr. H. H. Schwartz, chief of field service, dated April 27, 1909.

Original letter from H. L. Underwood, Assistant Chief of Field Service, to Mr. L. R. Glavis, chief of field division, dated May 24, 1909.

Impression copy of a letter from Secretary to the Attorney-General, dated May —, 1909.

Impression copy of letter from Frank Pierce, First Assistant Secretary, to the Commissioner of the General Land Office, dated May 19, 1909.

Original letter from Louis R. Glavis, Chief of Field Division, to the Commissioner General Land Office, dated May 26, 1909.

Original telegram from Glavis, chief, to Commissioner General Land Office, dated June 23, 1909.

Original telegram from Dennett, commissioner, to Special Agent Glavis, dated June 24, 1909.

Copy of telegram from Glavis, chief, to H. H. Schwartz, dated June 29, 1909.

Copy of telegram from Glavis, chief, to Commissioner General Land Office, dated June 30, 1909.

Original telegram from Schwartz, acting assistant commissioner, to Special Agent Glavis, dated July 1, 1909.

Copy of letter from L. R. Glavis, Chief Field Division, to Commissioner General Land Office, dated July 8, 1909.

Copy of telegram from Glavis, chief, to Commissioner General Land Office, dated July 16, 1909.

Original letter from H. H. Schwartz, acting assistant commissioner, to Mr. L. R. Glavis, chief of field division, dated July 23, 1909.

Copy of letter from L. R. Glavis, Chief Field Division, to Hon. Fred Dennett, Commissioner General Land Office, dated July 26, 1909.

Original letter H. H. Schwartz to L. R. Glavis, Chief Field Division, dated August 10, 1909.

Original letter H. H. Schwartz, acting assistant commissioner, to L. R. Glavis, dated August 11, 1909.

Copy of telegram from Schwartz, acting assistant commissioner, to J. M. Sheridan, special agent, dated August 17, 1909.

Original telegram from J. M. Sheridan to H. H. Schwartz, General Land Office, Washington, D. C., dated August 19, 1909.

Original telegram from Sheridan to H. H. Schwartz, General Land Office, Washington, D. C., dated August 30, 1909.

Original telegram from Sheridan to M. D. McEniry, Denver, Colo., dated August 30, 1909.

Copy of telegram from Glavis, chief, to Commissioner General Land Office, Washington, D. C., dated September 17, 1909.

Original telegram from Schwartz, chief, to L. R. Glavis, chief, dated September 18, 1909.

Copy of telegram from Glavis, chief, to H. H. Schwartz, General Land Office, Washington, D. C., dated September 18, 1909.

Copy of report of coal property in Kayak recording district controlled by Clarence Cunningham.

Mr. VERTREES. In this same connection, Mr. George A. Parks, who was examined before the committee, has called attention to certain errors in the printed report of his testimony. I desire to present them. There is also one error in the testimony of Miss Shartell, on page 2573.

The CHAIRMAN. You may submit them to Mr. Brandeis, and if there is no disagreement between you the corrections will be made and submitted to the committee later.

Mr. VERTREES. Now, it is necessary, Mr. Chairman, to bring to the attention of the committee the missing letters, which were printed in the record. They are erroneously printed. It will be recalled by the committee that in reading the list of those that were found it was stated that there were certain blue pencil numbers on them—those that were found and sent up by the Forestry Service.

The CHAIRMAN. Those were copies.

Mr. VERTREES. Copies; yes, sir. They are not so designated in the printed record, and I have here a list of those letters, by number, so that there will be no mistake.

The CHAIRMAN. Of the original letters?

Mr. VERTREES. No; the copies that came up from the Forestry Bureau.

The CHAIRMAN. You mean you have a list of those copies?

Mr. VERTREES. That I wish added. They are already printed, but they are not distinguished in the way they should be, and some of them are duplicated. So I have stated here, as an explanation of that: the committee will recall that when the initialed copies of the concealed letters were presented to the committee while Miss Shartell was a witness on the stand, copies which had been sent up to this committee in response to its demand, by the Forestry Bureau, were mentioned and described—it being stated at the time as each one was presented that it bore a number in blue pencil, which number was stated to the committee. On examination of the printed record, I find that these numbers have not been given, and that there is some confusion and duplication in the list as printed. In order that there may be no mistake, I desire to again present the matter to the committee, with the statement that the facts and the papers presented by me as coming from the Forestry Bureau are as follows:

In response to the demand of the committee, February 16, 1910, the Secretary of Agriculture filed with this committee a number of

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A list of the papers of which he made copies and which were returned to me at about 9.20 a. m. Monday morning, September 20, are attached herewith. As stated, these papers were returned to me, and I assume he made copies of all of them.

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Mr. VERTREES. That I wish added. They are already printed, but they are not distinguished in the way they should be, and some of them are duplicated. So I have stated here, as an explanation of that: the committee will recall that when the initialed copies of the concealed letters were presented to the committee while Miss Shartell was a witness on the stand, copies which had been sent up to this committee in response to its demand, by the Forestry Bureau, were mentioned and described—it being stated at the time as each one was presented that it bore a number in blue pencil, which number was stated to the committee. On examination of the printed record, I find that these numbers have not been given, and that there is some confusion and duplication in the list as printed. In order that there may be no mistake, I desire to again present the matter to the committee, with the statement that the facts and the papers presented by me as coming from the Forestry Bureau are as follows:

In response to the demand of the committee, February 16, 1910, the Secretary of Agriculture filed with this committee a number of

papers, which were described in his letter to the committee as being contained in eight jackets, the contents of each jacket being described in his communication as the record shows. Jacket No. 2 contained a number of papers, numbered from 1 to 166 consecutively, the numbers being written in blue pencil, as was stated with respect to the letters heretofore mentioned. The letter of the Secretary states that the jackets contain all papers then in the files of the department received from Louis R. Glavis relative to the Alaska coal claims. Among those described in this list as being contained in jacket No. 2 are the following:

- No. 9. Letter Wendell McLaughlin to recorder, United States land office, December 31, 1906.
- No. 10. Letter A. H. Wheatley to P. M. Mullen, receiver, Juneau, January 4, 1907.
- No. 30. Letter Clarence Cunningham to register and receiver, Juneau, September 26, 1907.
- No. 32. Letter W. S. Yearsley to register, Juneau, December 23, 1907.
- No. 36. Letter A. H. Wheatley to P. M. Mullen, December 30, 1907.
- No. 39. Letter Arthur D. Jones to P. M. Mullen, January 7, 1908.
- No. 41. Telegram C. Cunningham to register and receiver, Juneau, January 8, 1908.
- No. 43. Letter Arthur D. Jones & Co., to P. M. Mullen, receiver, January 11, 1908.
- No. 44. Letter C. Cunningham to register and receiver, Juneau, January 15, 1908.
- No. 52. Letter C. Cunningham to J. W. Dudley, March 10, 1908.
- No. 53. Letter H. Harriman to John W. Dudley, March 12, 1908.
- No. 54. Letter C. Cunningham to register and receiver, Juneau, March 19, 1908.
- No. 58. Letter C. Cunningham to P. M. Mullen, April 13, 1908.
- No. 63. Letter C. Cunningham to J. W. Dudley, May 9, 1908.
- No. 67. Letter James D. Finch to register, Juneau, June 3, 1908.

The missing letters are published in full at page 839 of volume 2 of the record. No copies were sent to this committee in response to the demand upon the Forestry Bureau by it of the following of the 24 missing letters:

- Letter R. A. Ballinger to register and receiver, Juneau, December 23, 1908.
- Letter Fred Dennett to R. A. Ballinger, December 17, 1908.
- Letter Clarence Cunningham to P. M. Mullen, Juneau, December 11, 1907.
- Letter Clarence Cunningham to register and receiver, Juneau, March 14, 1908.
- Letter Walter M. French to John W. Dudley, April 19, 1909.
- Letter M. A. Green to John W. Dudley, Juneau, January 7, 1909.
- Letter M. A. Green to John W. Dudley, Juneau, April 23, 1909.
- Letter Thomas Payne to John W. Dudley, August 3, 1907.
- Letter William Sulzer to register, Juneau, May 23, 1908.
- Letter F. Watson to register and receiver, Juneau, April 3, 1908.

The CHAIRMAN. That is simply to make the matter clear?

Mr. VERTREES. To make clear what has already gone in.

The CHAIRMAN. You desire to make that statement?

Mr. VERTREES. Yes, sir.

Mr. BRANDEIS. Have you a carbon of that statement?

Mr. VERTREES. Yes, sir; I have one here, and I will hand it to you in a moment, as the printed list already appears at page 2576 of the record, and it is that that I wish to correct.

I wish in this connection to call attention to the letter of Mr. Wilson, Secretary of Agriculture, now on file, the whole of which need not be printed. It is dated February 16, 1910, addressed to Mr. Chairman Nelson. It is the letter which sends up these copies from the Forestry Department. The opening paragraph is: "In compliance with your request of the 2d instant, I am sending you herewith all papers in the files of the office of this department."

That is to say, all papers in the file are there relative to the Alaska coal claims. These have been in the files of the department, describe

the eight jackets, and in jacket No. 1 is a list of these letters to which I have just referred—that is, copies of them.

I want to call attention to one of the letters which is sent up by Secretary Wilson from the department, and that is an original letter from L. R. Glavis, dated September 18, 1909, written at Seattle, to the Forester, United States Forestry Service, Washington, D. C.

Sir: I have this day transmitted copies of a great portion of the evidence relating to the Alaska coal cases within the Chugach National Forest. I believe these documents will be of assistance to your representative at the hearing which I understand will take place in the near future. The office of the chief of field division and the General Land Office are still supplied with copies as well as the originals of these papers.

This I wish to state: The letter of Mr. Secretary Wilson shows it is the only letter they have from Mr. Glavis transmitting documents, and I state that because it may have been shown that these copies were transmitted to the Forestry Bureau by Mr. Glavis as of date September 18, 1909, and from Seattle, and with it comes in those initialed copies that the Forester sends up here.

The CHAIRMAN. Mr. Vertrees, do I understand you, and I ask this for my information, that those are copies of letters sent up here from the Agricultural Department that were initialed as Miss Shartell stated?

Mr. VERTREES. That is to say, the——

The CHAIRMAN. I mean they bear her initials.

Mr. VERTREES. Let me restate it. That the missing letters were found, two copies of each one, which were initialed by her; the Forester sends up these documents which I have just referred to, and amongst them—the papers they sent up—are also fifteen copies, initial copies of fifteen of those letters. Six, no copies were sent up at all, but they come up from the Forester. Those initials of fifteen of them and those letters of Mr. Glavis I call attention to show that he sent them to the Forester September 18, 1909.

Now, Mr. Christensen, I will examine you.

Senator FLETCHER. You stated there were fifteen copies and that there were six copies not sent.

Mr. VERTREES. There were six of which no copies were sent at all.

Senator FLETCHER. That would make twenty-one, and, as I understand, there are twenty-four of those letters.

Mr. VERTREES. Then there must be 8 instead of 6. Let me see that list. I said 6.

Mr. BRANDEIS. Here is the list, Mr. Vertrees.

Mr. VERTREES (examining list). I hastily looked at it. Yes, sir; there are 10 of them. Ten added to the 15 would make 25. Twenty-four letters; one was delivered, the letter of January 25, the morning he left. I will correct that; instead of there being 6; when Miss Shartell was examined, the copy of the telegram which she sent to Mr. Christensen as to the search made by Mr. Parks, was offered in evidence, I think, and they called for the original telegram instead of the copy. Mr. Christensen has given me the original. It is the same.

Mr. BRANDEIS. Is the letter that accompanies it here also?

Mr. VERTREES. The letter that confirmed that telegram. It was a confirmatory letter, Mr. Christensen?

Mr. CHRISTENSEN. The original letter is not here now. But I think it is in Portland. Saturday evening I telegraphed for it. I received

a reply Monday in which they said they were forwarding two letters I am not able to state which of the letters they forwarded, but I assume one of them is that letter.

Mr. VERTREES. Have you been sworn, Mr. Christensen?

Mr. CHRISTENSEN. No, sir.

TESTIMONY OF ANDREW CHRISTENSEN.

Andrew Christensen, having been first duly sworn by the chairman testified as follows:

Mr. VERTREES. Please state your name to the committee.

Mr. CHRISTENSEN. Andrew Christensen.

Mr. VERTREES. Where do you live, Mr. Christensen.

Mr. CHRISTENSEN. I am at present residing at Portland, Oreg.

Mr. VERTREES. Are you in the government service; if so, in what position?

Mr. CHRISTENSEN. I am chief of the field division of the General Land Office, Department of the Interior, with headquarters at Portland, Oreg.

Mr. VERTREES. How long have you held that position?

Mr. CHRISTENSEN. I assumed charge of the Portland division on March 27, 1909.

Mr. VERTREES. Previous to that had you been in the government service?

Mr. CHRISTENSEN. Yes. I entered the service of the General Land Office in June, 1908, and I served in California as a special agent until I was appointed chief of the field division at Portland.

Mr. VERTREES. Are you acquainted with Mr. L. R. Glavis?

Mr. CHRISTENSEN. I am.

Mr. VERTREES. How long have you known him?

Mr. CHRISTENSEN. I met him first in February, 1909, in Portland.

Mr. VERTREES. Mr. Glavis was at one time, was he not, chief of the field division, with headquarters at Seattle?

Mr. CHRISTENSEN. Yes, sir.

Mr. VERTREES. During what time?

Mr. CHRISTENSEN. When I succeeded him at Portland on March 27 and immediately took charge of the seventeenth field division, with headquarters at Seattle.

Mr. VERTREES. When was Mr. Glavis superseded by you?

Mr. CHRISTENSEN. In Seattle?

Mr. VERTREES. Yes.

Mr. CHRISTENSEN. His dismissal dated from September 18, when I assumed charge immediately.

Mr. VERTREES. When did you receive instructions to take charge?

Mr. CHRISTENSEN. On September 16.

Mr. VERTREES. In what form?

Mr. CHRISTENSEN. In the form of a telegram from Commissioner Dennett of the General Land Office.

Mr. VERTREES. Did that telegram go to Portland or did it go to Seattle?

Mr. CHRISTENSEN. It was forwarded to—it was sent direct to Seattle, in care of the United States land office.

Mr. VERTREES. Do you know whether that telegram was opened on the 16th by Mr. Glavis?

Mr. CHRISTENSEN. Yes, sir; it was.

Mr. VERTREES. So that on the 16th he knew he would be displaced or superseded by you?

Mr. CHRISTENSEN. I assume so, by the telegram.

Mr. VERTREES. Have you the telegram?

Mr. CHRISTENSEN. I have.

Mr. VERTREES. Please read it to the committee?

Mr. CHRISTENSEN. It is dated Washington, D. C., September 16, 1909 [reading]:

WASHINGTON, D. C., September 16, 1909.

A CHRISTENSEN,

Chief Field Division, U. S. Local Land Office, Seattle, Wash.:

You will take charge of all records and files in the office of seventeenth field division and prepare receipts in triplicate, giving Mr. Glavis one copy, retaining one for yourself, and forwarding one to this office; exhibit this telegram to Glavis and direct him to aid you in transfer. You may employ necessary stenographers' assistance, and you are authorized to require the assistance of any agent from Portland; acknowledge receipt hereof by wire.

DENNETT, Comr.

Mr. VERTREES. If I have understood you correctly, that did not go to you at Portland, but went to you at Seattle. It went to Mr. Glavis's office?

Mr. CHRISTENSEN. Let me explain that: September 15 I received a telegram from Mr. Schwartz, directing me to proceed immediately to Seattle and to keep in touch with the local land office, where I would receive further instructions. I did so and reported to the United States land office at Seattle on the morning of the 16th, but no telegram had been delivered there for me. That was on Saturday, and I told the local officers that I would go out to the fair and keep in touch with them, and to hold any telegrams that might come for me. I returned from the fair about 12 o'clock and went to the land office, but no telegram had been received, and so I went to luncheon, and told them where they could find me in case one came. As I was coming out from lunch I met Mr. Glavis on the street, and he exhibited to me a copy of that telegram I have just read, and stated that it was delivered to his office in the morning and that he had opened it.

Mr. VERTREES. So he knew on the 16th, then, that he was to be superseded by you?

Mr. CHRISTENSEN. Yes, sir.

Mr. VERTREES. Now, what did you do then toward taking charge of the office?

Mr. CHRISTENSEN. Immediately after I met Glavis we conferred as to the method to pursue to take over the records and the employment of the necessary assistance. On September 16, the stenographers had arrived and we proceeded to take over the records and to make records of all the papers in the office.

Mr. VERTREES. What was necessary to be done in order to turn over the office?

Mr. CHRISTENSEN. We made a list of all the cases on file in the office, amounting to some three or four thousand cases, I imagine.

Mr. VERTREES. Several thousand.

Mr. CHRISTENSEN. Yes.

Mr. VERTREES. If I have understood you correctly that telegram directed you to give a receipt for all papers.

Mr. CHRISTENSEN. It did.

Mr. VERTREES. And you were preparing to do that?

Mr. CHRISTENSEN. I was.

Mr. VERTREES. Now, in point of fact—omitting what happened in the meantime—in point of fact, did you finally give him a receipt?

Mr. CHRISTENSEN. I did.

Mr. VERTREES. About how long was that receipt; how many pages?

Mr. CHRISTENSEN. I think there were 127 pages in all.

Mr. VERTREES. How did you give it to him? What I mean by that is, did you deliver it to him before he left or transmit it to him?

Mr. CHRISTENSEN. It was not prepared before Mr. Glavis left the city. He left orders with Mr. Andrew Kennedy to forward it to him.

Mr. VERTREES. Did you do that?

Mr. CHRISTENSEN. I did.

Mr. VERTREES. You gave it to Mr. Kennedy?

Mr. CHRISTENSEN. Yes, sir; I gave it to Mr. Kennedy.

Mr. VERTREES. How much of it had been completed at the time he left?

Mr. CHRISTENSEN. All except the papers that he returned. Some papers he returned to me on Monday morning, September 20, and some other papers that he returned on Saturday evening, which he had been keeping in his room at the Lincoln Hotel.

Mr. VERTREES. Saturday evening would be the 18th of September, would it not?

Mr. CHRISTENSEN. Yes, sir.

Mr. VERTREES. So it was Thursday that this telegram came—Thursday in the week—the 16th?

Mr. CHRISTENSEN. Yes, sir; Thursday, the 16th.

Mr. VERTREES. What were you doing, now, Thursday and Friday?

Mr. CHRISTENSEN. Thursday we did not do very much except to make necessary arrangements to have stenographers report the next morning and also secured some typewriters.

Mr. VERTREES. You worked Friday getting up the receipts?

Mr. CHRISTENSEN. We did.

Mr. VERTREES. Now, when did the first question arise between you and Mr. Glavis as to whether all the papers were being turned over?

Mr. CHRISTENSEN. Not until Saturday evening. During the afternoon Mr. Glavis had told Miss Shartell and Miss Schwinnen, whom I had employed at his suggestion, that when he had completed the work he had given them that all of the records had been copied. So when they had finished the work they came to me and told me what Glavis had told them, and that this excused them, and I told them they could go. So when we went to check up the records I found several missing. I then immediately telephoned Mr. Glavis, who was at his room at the Lincoln Hotel, and he said that he was then busy going over them and that he would return them shortly. He did finally return some of the papers later on in the evening, I should say about 4 or 5 o'clock.

Mr. VERTREES. What day of the week would you say that was?

Mr. CHRISTENSEN. That was Saturday evening.

Mr. VERTREES. That would be the 18th?

Mr. CHRISTENSEN. The 18th; yes, sir. And when he brought him in he stated that he wanted me to sign a receipt for those that had been already listed, and that he had some papers there which he wanted to dictate to some stenographer and of which he wanted to have copies or partial copies made of them. I refused to accede to that, and told him that all of the records should be included in his receipt. We wrangled over it for a little while and finally it was agreed that the papers which Mr. Glavis had——

Mr. VERTREES. Wait a moment. If I understand you, Mr. Christensen, the only difference between you was this: He wanted a receipt for those papers then turned over, another receipt to be given later or the others which he admitted he had, and you declined to do that, but wanted to give one receipt for the papers?

Mr. CHRISTENSEN. That was the only difference.

Mr. VERTREES. You were saying it was finally agreed upon that something would be done?

Mr. CHRISTENSEN. It was finally agreed that the papers which he had and which he refused to let me see should be delivered to Stenographer Spaulding, to be kept in escrow until the receipts could be prepared. I finally agreed to that, that Mr. Spaulding should keep these papers in escrow, but I insisted that the receipts should be dictated when the work should be performed in the office. And it was my understanding that that was the case, that Mr. Glavis was going down Saturday evening to dictate the balance of the receipt to Mr. Spaulding.

Mr. VERTREES. In the course of your statement you remarked that there were papers which he refused to let you see. What do you mean by that?

Mr. CHRISTENSEN. He had quite a number of papers which he had before him on his desk, and those were the papers, the only ones, that were not listed. He said he would not let me see them until a receipt had been prepared. I do not know what they were.

Mr. VERTREES. Are those the papers Spaulding was to keep?

Mr. CHRISTENSEN. Yes; those were the papers Mr. Spaulding was to hold in escrow.

Mr. VERTREES. What did you do with those papers first?

Mr. CHRISTENSEN. I found afterwards that he did not give them to Mr. Spaulding, but that he took them from the office himself to his room at the hotel. I asked him just as he was leaving the office whether or not he had any official records with him, and he said he did not, but after he had gone I asked Mr. Spaulding if he had those papers—Spaulding had them—he said he did not; that he assumed Glavis had taken them with him.

Mr. VERTREES. That was on the evening of the 18th, as I understand you?

Mr. CHRISTENSEN. Yes, sir.

Mr. VERTREES. The next day would be Sunday the 19th?

Mr. CHRISTENSEN. Yes, sir.

Mr. VERTREES. What happened next, after his departure from the office?

Mr. CHRISTENSEN. In the evening after the boys and myself had returned from dinner I telephoned to United States Attorney Todd and told him that Glavis had taken these records from the office without my permission and knowledge and that I did not know whether I would ever get hold of them or not, although Glavis had

never stated that he would not turn them over. He said that he did not think any action should be taken that evening, but to let him know the next morning what action Glavis had taken. So, the next morning, Sunday morning, I intercepted Spaulding before he went to Glavis's hotel, and got him to read the notes that Glavis had dictated to him on Saturday evening, and I found it would be impossible for me to sign such a receipt for the reason that Glavis would take one letter and say, "Copy paragraph 1 and 2" of such letter and leave out the balance, and then he would go on to another letter and say, "Copy this letter," etc. So I told Mr. Spaulding that I would not sign such a receipt and that if he did any work it should be done in the office.

Mr. VERTREES. What happened between you and Glavis? What did you do toward making any demand on him that day for papers?

Mr. CHRISTENSEN. I tried to get the United States attorney again that morning, but it seems that he was not at home, so I took it up with his assistant, Mr. Hudson, and he advised that I should write Mr. Glavis a letter, giving him a certain time in which to return the records, which I did. Shall I read the letter?

Mr. VERTREES. Did you deliver the letter in person?

Mr. CHRISTENSEN. I did.

Mr. VERTREES. Where?

Mr. CHRISTENSEN. At the Lincoln Hotel.

Mr. VERTREES. Wait a moment. I do not think it is necessary to read that, for it is my recollection that it is already in the record.

Mr. CHRISTENSEN. The letter is not in.

Mr. VERTREES. The letter is not in?

Mr. CHRISTENSEN. No, sir; the letter is not in.

Mr. VERTREES. Well, then, you may read the letter. Read it, please, if it is not already in.

Mr. CHRISTENSEN. It is dated Seattle, Wash., September 19, 1909 [reading]:

SEATTLE, WASH., September 19, 1909.

Mr. LOUIS R. GLAVIS,
Lincoln Hotel, Seattle, Wash.

SIR: Formal demand is hereby made upon you for certain papers, the character of which is at this time unknown to me, and which are, I understand, involved in the Alaska coal cases. You have heretofore declined to permit me to see said papers, and for that reason I am unable to enumerate them.

I have stated to you several times that I am willing to give you full receipt for all of the official records of this office when they are properly turned over to me; and I am ready and willing to give you such receipt for the papers that you now have in your room at the Lincoln Hotel, Seattle, Wash. If you will bring them to the office, you can dictate your receipt to either of the three stenographers or all of them, if you so desire. This also applies to a number of papers in what is known as the "Binger Hermann case," involving an indictment against former Commissioner of the General Land Office Binger Hermann, who is now in the State of Oregon, which indictment is pending in the district of Oregon.

You will please deliver all of the above papers to Special Agent Maguire, who will present this letter to you. If you do not desire to trust them with him you can bring them to the office in person.

As you are no longer connected with the government service in any way, these papers are being unlawfully retained by you. The fact of the matter is that they should have been left in this office and they were taken from here through misrepresentation by yourself and without my knowledge or permission.

If the papers are not in this office by 9.30 a. m., September 20, 1909, the matter will be presented to the United States attorney for proper action with a view to protecting the interests of the Government both civilly and criminally.

Very respectfully,

A. CHRISTENSEN, *Chief of Field Division*

Mr. VERTREES. I wish that letter to be printed as part of the record, Mr. Chairman.

The CHAIRMAN. It will be.

Mr. VERTREES. You state there it was to be presented by Special Agent Maguire and you have testified that you presented it yourself. Will you please explain that?

Mr. CHRISTENSEN. At the time I dictated it I sent Mr. Maguire up to the hotel and told him to remain there until he could intercept Mr. Glavis. Later in the afternoon I happened over to the hotel with Special Agent Good, and as we entered the corridor of the hotel I found Mr. Glavis sitting there and it seems that Maguire had overlooked him. So I found Maguire and took the letter from him and presented it to Mr. Glavis in person.

Mr. VERTREES. That was on Sunday evening, the 19th of September?

Mr. CHRISTENSEN. That was Sunday afternoon, the same day.

Mr. VERTREES. What did he say?

Mr. CHRISTENSEN. He said that he would then prepare the receipt himself and would return the papers.

Mr. VERTREES. Anything further said there?

Mr. CHRISTENSEN. No, nothing. I told him I regretted to have to take such action; it was not a personal matter. He said it was all right; that he appreciated the circumstances.

Mr. VERTREES. What next happened between you and him or the office with respect to these papers?

Mr. CHRISTENSEN. The next morning, Monday morning, September 20, he returned some papers—a number of letters and telegrams.

Mr. VERTREES. Did he do that by mail, or did he bring them in person to the office?

Mr. CHRISTENSEN. He brought them in in person.

Mr. VERTREES. Was that at the appointed hour, 9.30?

Mr. CHRISTENSEN. That was about 9.20, I think.

Mr. VERTREES. So he came to the office, then, about 9.20 the next Monday morning and returned a number of documents and papers?

Mr. CHRISTENSEN. He did.

Mr. VERTREES. And turned them over to you?

Mr. CHRISTENSEN. He did.

Mr. VERTREES. Then what happened, or, rather, before you state what happened, did he make any statement with reference to them, whether they were all or not?

Mr. CHRISTENSEN. He stated, "Here are the papers that I dictated to Spaulding." And I took them from him and laid them on Mr. Spaulding's desk and requested Mr. Spaulding to make a list of them, which he did, and I have here a list of them.

Mr. VERTREES. A list of those papers?

Mr. CHRISTENSEN. A list of those papers that Mr. Glavis delivered to me.

Mr. VERTREES. At that time?

Mr. CHRISTENSEN. Yes, sir; at that time.

Mr. VERTREES. I would like, Mr. Chairman, to put that list in evidence.

The CHAIRMAN. Very well; it will be admitted.

(The list referred to is as follows:)

ALASKA COAL CASES.

Letters and telegrams as follows:

Original letter from Fred Dennett, acting commissioner, to Mr. Horace T. Jones, special agent, dated June 21, 1907.

Copy of letter to the honorable commissioner, dated August 10, 1907, by a special agent, copy unsigned.

Copy of letter to honorable commissioner, dated August 13, 1907, by a special agent, copy unsigned.

Copy of letter from L. R. Glavis, Chief Field Division, to Commissioner General Land Office, dated November 12, 1907.

Original letter to Mr. Louis R. Glavis, Chief Field Division, from Horace Tillard Jones, special agent, dated December 2, 1907.

Original letter from R. A. Ballinger, commissioner, to Mr. Louis R. Glavis, Chief Field Division, dated December 28, 1907.

Original letter from Clarence Cunningham to the register and receiver, United States Land Office, Juneau, Alaska, dated January 15, 1908.

Original letter from H. K. Love, special agent, to Mr. L. R. Glavis, Chief Field Division, dated January 17, 1908.

Copy of letter to Hon. Oscar Foote, Seattle, Wash., unsigned, dated March 10, 1908.

Original telegram to Special Agent Glavis from Dennett, commissioner, dated May 2, 1908.

Original telegram from Dennett, commissioner, to Special Agent L. R. Glavis, dated March 10, 1909.

Original telegram from Schwartz, Chief of Field Service, to Special Agent Glavis, dated April 20.

Original telegram from Schwartz, Chief of Field Division, to Special Agent Glavis, dated April 24, 1909.

Copy of letter from L. R. Glavis, Chief Field Division, to Mr. H. H. Schwartz, Chief of Field Service, dated April 27, 1909.

Original letter from H. L. Underwood, Assistant Chief of Field Service, to Mr. L. R. Glavis, Chief Field Division, dated May 24, 1909.

Impression copy of a letter from Secretary to the Attorney-General, dated May —, 1909.

Impression copy of letter from Frank Pierce, First Assistant Secretary, to the Commissioner of the General Land Office, dated May 19, 1909.

Original letter from Louis R. Glavis, Chief Field Division, to the Commissioner General Land Office, dated May 26, 1909.

Original telegram from Glavis, chief, to Commissioner General Land Office, dated June 23, 1909.

Original telegram from Dennett, commissioner, to Special Agent Glavis, dated June 24, 1909.

Copy of telegram from Glavis, chief, to H. H. Schwartz, dated June 29, 1909.

Copy of telegram from Glavis, chief, to Commissioner General Land Office, dated June 30, 1909.

Original telegram from Schwartz, acting assistant commissioner, to Special Agent Glavis, dated July 1, 1909.

Copy of letter from L. R. Glavis, Chief Field Division, to Commissioner General Land Office, dated July 8, 1909.

Copy of telegram from Glavis, chief, to Commissioner General Land Office, dated July 16, 1909.

Original letter from H. H. Schwartz, acting assistant commissioner, to Mr. L. R. Glavis, Chief of Field Division, dated July 23, 1909.

Copy of letter from L. R. Glavis, Chief Field Division, to Hon. Fred Dennett, Commissioner General Land Office, dated July 26, 1909.

Original letter H. H. Schwartz to L. R. Glavis, Chief Field Division, dated August 10, 1909.

Original letter H. H. Schwartz, acting assistant commissioner, to L. R. Glavis, dated August 11, 1909.

Copy of telegram from Schwartz, acting assistant commissioner, to J. M. Sheridan, special agent, dated August 17, 1909.

Original telegram from J. M. Sheridan to H. H. Schwartz, General Land Office, Washington, D. C., dated August 19, 1909.

Original telegram from Sheridan to H. H. Schwartz, General Land Office, Washington, D. C., dated August 30, 1909.

Original telegram from Sheridan to M. D. McEniry, Denver, Colo., dated August 30, 1909.

Copy of telegram from Glavis, chief, to Commissioner General Land Office, Washington, D. C., dated September 17, 1909.

Original telegram from Schwartz, chief, to L. R. Glavis, chief, dated September 18, 1909.

Copy of telegram from Glavis, chief, to H. H. Schwartz, General Land Office, Washington, D. C., dated September 18, 1909.

Copy of report of coal property in Kayak recording district controlled by Clarence Cunningham.

Mr. VERTREES. What then happened, Mr. Christensen?

Mr. CHRISTENSEN. In the meantime, Sunday, we had discovered that a number of letters were missing from an envelope that had been turned over to Miss Schwinnen by Mr. Glavis to make a copy of the receipt which Bowman had furnished the Juneau land office for the letters.

Mr. VERTREES. Wait a moment. You say you had discovered that they were missing from that envelope. How did you make the discovery? What did he have to go by?

Mr. CHRISTENSEN. There was in the envelope a copy of the receipt that Mr. Bowman furnished the Juneau office for all letters that he took therefrom.

Mr. VERTREES. Mr. Bowman had been sent to the Juneau office to get the papers up there?

Mr. CHRISTENSEN. Yes, sir.

Mr. VERTREES. And had given a receipt to the Juneau officers for the documents and papers?

Mr. CHRISTENSEN. Yes, sir.

Mr. VERTREES. And had kept a copy of that receipt and put it in the envelope with the papers he brought back?

Mr. CHRISTENSEN. Yes, sir.

Mr. VERTREES. And in that envelope you found that copy of that receipt?

Mr. CHRISTENSEN. Mr. Glavis, as you see, on the 17th or 18th, had taken this envelope from Mr. Bowman's satchel, so I understand, and took the receipt and put it on the outside of the envelope and told Miss Schwinnen, the stenographer, to make a copy of the receipt, and after Miss Schwinnen had made the copy I turned it over to Special Agent Maguire, whom I had called from Portland to assist me to check up the letters with Miss Schwinnen to see if they were all there.

Mr. VERTREES. And he checked it and found certain missing—found letters missing?

Mr. CHRISTENSEN. He did.

Mr. VERTREES. Are you able to state what those missing letters were?

Mr. CHRISTENSEN. I think there were 24 letters missing.

Mr. VERTREES. Are they the 24 that we have spoken of as the "concealed letters?"

Mr. CHRISTENSEN. They are.

Mr. MADISON. When was that checking up done?

Mr. CHRISTENSEN. The checking was really done on Saturday or Sunday. It was not called to my attention until Sunday.

Mr. MADISON. Saturday was the 18th?

Mr. CHRISTENSEN. Yes, sir; Saturday was the 18th.

Mr. MADISON. And Sunday was the 19th?

Mr. CHRISTENSEN. Yes, sir.

Mr. VERTREES. On page 455 of the record is printed a letter dated September 20, 1909, at Seattle addressed to Mr. Glavis and signed by you.

The CHAIRMAN. What page of the record?

Mr. VERTREES. 455. Is that a list of the letters that were missing according to the receipt you have mentioned that you were checking up by?

Mr. CHRISTENSEN. It is.

Mr. VERTREES. When was that prepared?

Mr. CHRISTENSEN. That was prepared by Mr. Maguire there on Sunday or Monday morning. I do not know whether the original was mailed to Mr. Glavis or whether it was handed to him when he was in the office on Monday morning when he returned these papers to me.

Mr. VERTREES. Is it true that one or the other was done—that is, that the original was mailed to him or delivered to him then or a copy on Monday morning?

Mr. CHRISTENSEN. That is true. It was either given to him the day he reported to the office, on Monday morning, or I exhibited it to him personally; handed it to him personally when I called his attention to the letters that were missing.

Mr. DENBY. Mr. Vertrees, may I interrupt? Mr. Christensen, were those 24 missing letters enumerated in the receipt you gave Mr.——

Mr. CHRISTENSEN. Yes, sir; a copy of my letter of September 20, 1909, is included in the receipt.

Mr. DENBY. The receipt was made up before you discovered they were missing, then?

Mr. CHRISTENSEN. The receipt was not prepared—the receipt was not ready for signature when they were discovered, but I simply put this in to show that I had asked Mr. Glavis for the letters, and they were not on file.

Mr. DENBY. So the receipt contained an enumeration of the letters. But you had put on record a statement that the letters were not in there according to the terms of the decision?

Mr. CHRISTENSEN. Yes, sir.

Mr. VERTREES. As I understand it, however, you merely attached to this receipt a copy of the letter showing that you did not have them?

Mr. CHRISTENSEN. Yes, sir.

Mr. VERTREES. Now, the point I wish to get at is——

Senator PURCELL. Did Mr. Glavis get a copy of that letter?

Mr. CHRISTENSEN. Not the original. They have offered in evidence extra copies of that letter to me and placed with the copies of the receipts.

Senator SUTHERLAND. Were the lists of these 24 letters omitted in the receipt you gave to Mr. Glavis?

Mr. VERTREES. In the receipt you gave?

Senator SUTHERLAND. In the receipt you said covered 122 pages?

Mr. CHRISTENSEN. Only in so far as it just sets forth a copy of this letter to Mr. Glavis.

Senator SUTHERLAND. It was copied in the body of the receipt?

Mr. CHRISTENSEN. Yes, sir; it was copied in the body of the receipt.

Senator SUTHERLAND. Copied into the receipt?

Mr. CHRISTENSEN. It is one of the pages in that receipt.

Mr. MADISON. Then reading your receipt as an entirety it included of course this letter, which would include it, would it not, constituting a letter receipting for those 24 letters?

Mr. CHRISTENSEN. It would not.

Mr. MADISON. And anyone reading it would understand that you did not receipt for those, but specially excepted them?

Mr. CHRISTENSEN. Yes, sir. I might just read it.

Mr. VERTREES. Have you got the original receipt or a copy of it with you?

Mr. CHRISTENSEN. I have a copy of the receipt with me.

Mr. VERTREES. Let me see that.

Senator FLETCHER. I understand this letter was written on Sunday.

Mr. CHRISTENSEN. Yes, sir.

Senator FLETCHER. Mr. Glavis came in on Monday at 9.30 and delivered certain other papers?

Mr. CHRISTENSEN. Yes, sir.

Senator FLETCHER. Were those papers which he delivered on Monday any of these embraced in this list of 24 missing letters?

Mr. CHRISTENSEN. Yes, sir; a letter of January 15, 1908, from Mr. Clarence Cunningham was among those papers returned to me on Monday morning by Mr. Glavis. It is set forth in a letter as a telegram, but that is a mistake. It should have been a letter.

Senator FLETCHER. In other words—

Mr. CHRISTENSEN. That was all; just that one letter.

The CHAIRMAN. As I understand it, Mr. Christensen, the letters he delivered to you that morning are these letters described in this receipt on page 459 of the hearing?

Mr. CHRISTENSEN. No, sir; those were the letters that were missing.

The CHAIRMAN. These are the missing letters?

Mr. CHRISTENSEN. Those are the missing letters.

Mr. MADISON. He only delivered 1 letter on Monday morning—1 of the 25?

Mr. CHRISTENSEN. Yes, sir.

Mr. MADISON. One of the 24 I should say. The other 24 he did not deliver?

Mr. CHRISTENSEN. The other 23.

Mr. MADISON. I thought it was 25.

Mr. CHRISTENSEN. No.

Mr. VERTREES. Twenty-four, including the telegram, and the telegram—

Mr. CHRISTENSEN. I may explain that discrepancy. There were some letters found in that box that were not listed in the receipt, furnished by Mr. Bowman for the reason that it seemed that there would be three of four letters together and he would only list the one on top. That accounts for the 25 found.

Mr. VERTREES. When you said "box" you meant "package," did you not; to make it clear?

Mr. CHRISTENSEN. I found in the box in February—

Mr. VERTREES. Mr. Bowman when he went to Juneau to get all these papers gave a receipt for them?

Mr. MADISON. And Sunday was the 19th?

Mr. CHRISTENSEN. Yes, sir.

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Mr. CHRISTENSEN. I have a copy of the receipt with me.

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The CHAIRMAN. These are the missing letters?

Mr. CHRISTENSEN. Those are the missing letters.

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Mr. VERTREES. When you said "box" you meant "package," did you not; to make it clear?

Mr. CHRISTENSEN. I found in the box in February—

Mr. VERTREES. Mr. Bowman when he went to Juneau to get all these papers gave a receipt for them?

Mr. CHRISTENSEN. Yes.

Mr. VERTREES. Now you say that it seemed that his receipt was not entirely accurate because you found one or two papers in there that were not in his receipt.

Mr. CHRISTENSEN. Yes, sir.

Mr. VERTREES. And you say that must be due to the fact that some of them were found together and he merely took the top one?

Mr. CHRISTENSEN. Yes, sir.

Mr. VERTREES. At any rate, there were several not found in his list.

Mr. CHRISTENSEN. What was your question?

Mr. VERTREES. My question was whether or not the receipt that Bowman gave the Juneau office was strictly accurate, or whether some of the papers were not included in it?

Mr. CHRISTENSEN. There were some papers received by Mr. Bowman not listed.

Mr. MADISON. And how many were there that were received by Mr. Bowman apparently, whether listed or not, including those that were listed and those that were not listed; how many, in all, were turned over by the Juneau office to Bowman?

Mr. CHRISTENSEN. I am unable to state that. There were a large number. I know in one—

Mr. MADISON. How many letters do you claim that on Saturday and Sunday, the 18th and 19th of September, 1909, were in the possession of Mr. Glavis?

Mr. CHRISTENSEN. I do not have any idea how many papers were in his possession, because he would not let me see them.

Mr. MADISON. How many did you ask him to turn over in this letter you wrote him on Sunday?

Mr. CHRISTENSEN. On the 19th, Sunday, I told him in my letter there, that I was unable to enumerate them because I did not know.

Mr. VERTREES. Did you not ask?

Mr. CHRISTENSEN. At the time that I wrote that letter of September 19, on Sunday, I did not know that these other 24 letters were missing. Therefore they were not mentioned.

Mr. MADISON. Then you claim that there were 24 letters missing on Sunday, the 19th?

Mr. CHRISTENSEN. Yes, sir; they were called to my attention—

Mr. MADISON. Now, then, did Mr. Glavis return one of those on Monday?

Mr. CHRISTENSEN. He did.

Mr. MADISON. So that left 23 missing?

Mr. CHRISTENSEN. Yes, sir.

Mr. MADISON. That is what I wanted to get at.

Mr. VERTREES. Now, then, Mr. Christensen, he appeared at the office, as I understand you, a little before 9.30 in response to that demand which you had made on him on Sunday?

Mr. CHRISTENSEN. He did.

Mr. VERTREES. And turned over to you a number of papers. Is that correct?

Mr. CHRISTENSEN. Yes, sir.

Mr. VERTREES. And turned over to you a number of papers; is that correct?

Mr. CHRISTENSEN. Yes, sir; he did.

Mr. VERTREES. And amongst those he then turned over to you was that Clarence Cunningham letter of January 15, 1908?

Mr. CHRISTENSEN. It was.

Mr. VERTREES. Now, did you then bring to his attention these letters, these 24 letters that were still missing?

Mr. CHRISTENSEN. I did.

Mr. VERTREES. Did you ask where they were?

Mr. CHRISTENSEN. I did.

Mr. VERTREES. What did he say in reply to that?

Mr. CHRISTENSEN. He said that he did not know where they were, but he assumed they were somewhere in the files of the office.

Mr. VERTREES. That was the reply he then made to you with respect to them?

Mr. CHRISTENSEN. Yes, sir.

Mr. VERTREES. Then, what happened, if anything?

Mr. CHRISTENSEN. I think that was all.

Mr. VERTREES. He then left the office?

Mr. CHRISTENSEN. Well, I did ask him prior to the time he left the office whether or not he had turned over all the records of the office to me; that is, whether or not I had the complete files of the office, and he told me that I did.

Mr. VERTREES. Now, when you asked him that, and yet, at the same time that you showed him this letter, saying that these 24 letters could not be found, what did he say in response to that?

Mr. CHRISTENSEN. He said he assumed they were somewhere in the files of the office—he did not know where they were.

Mr. VERTREES. But he did say positively, as I understand you, that he had turned over all that he had.

Mr. CHRISTENSEN. He did.

Mr. VERTREES. Did you see him any more?

Mr. CHRISTENSEN. No, sir; I do not think I did.

Mr. VERTREES. And that was on the morning of September 20, Monday morning, September 20, 1909?

Mr. CHRISTENSEN. Yes, sir.

Mr. VERTREES. When was the receipt completed?

Mr. CHRISTENSEN. Oh, it was finally completed on the morning of the 21st, ready for delivery to Mr. Glavis.

Mr. VERTREES. I wish you would show the committee the form in which the receipt mentions these missing letters, and I here hand you what you say is a copy of that receipt, and call your attention to page 124, and ask you to state to the committee what page 124 is.

Mr. CHRISTENSEN. Page 124 of the receipt is a copy of my letter to Mr. Glavis, setting forth the missing letters.

Mr. VERTREES. That is to say, a copy of the letter which appears printed on page 455 of the record?

Mr. CHRISTENSEN. It is.

Mr. BRANDEIS. Mr. Vertrees, if there is no objection, I should like to have that receipt marked for identification by the stenographer and retained by the committee. It will not be necessary to print it at this time.

The CHAIRMAN. Very well.

Mr. VERTREES. Now, as I have understood you, you had orders by telegraph to give Mr. Glavis a receipt?

Mr. CHRISTENSEN. I did.

Mr. VERTREES. Did you ever refuse to give him a receipt?

Mr. CHRISTENSEN. I did not.

Mr. VERTREES. Did you have a conversation that day, that is, the 20th, or shortly thereafter, over the telephone with Mr. Glavis, with reference to anything?

Mr. CHRISTENSEN. Yes, sir; some time during the afternoon of September 20 Mr. Glavis called me on the phone and told me he had some circulars that he wanted to retain. He said he wanted them especially to assist him in closing out his disbursing account, and I told him that was all right; that he could retain them.

Mr. VERTREES. Would they be printed circulars?

Mr. CHRISTENSEN. Yes, sir; they were circulars issued by the General Land Office.

Mr. VERTREES. Issued by the General Land Office—well?

Mr. CHRISTENSEN. He also asked me at that time, I think, how I was coming along with the receipt. I told him all right, that I expected to have it by 10 o'clock the next morning, and that he could call and get it at that time.

Mr. VERTREES. Did you then, in that conversation, or at any other time, state to Mr. Glavis that you had all the papers, that they had all been turned over to you?

Mr. CHRISTENSEN. I did not.

Mr. VERTREES. Had you found them all?

Mr. CHRISTENSEN. I had not.

Mr. VERTREES. Did you make any statement like that?

Mr. CHRISTENSEN. I did not.

Mr. VERTREES. Was it a fact that you had?

Mr. CHRISTENSEN. I did not have all the papers, as the receipt shows. Those 23 letters were missing.

Senator SUTHERLAND. Let me ask you, Mr. Christensen, did you call Mr. Glavis's attention to this page 124 containing a copy of your letter, or did he see it?

Mr. CHRISTENSEN. He saw it when he was in the office Monday morning. I called it to his attention at that time.

Senator SUTHERLAND. Did he make any comment upon it?

Mr. CHRISTENSEN. He told me he did not know where they were, but he assumed they were somewhere in the files of the office, or something to that effect.

Senator SUTHERLAND. Did he make any suggestion about a further search of the office?

Mr. CHRISTENSEN. No, sir.

Mr. MADISON. Were these the same letters, or a portion of them—or were these the letters, or a portion of the papers that you had demanded of him on Sunday?

Mr. CHRISTENSEN. As I said before, I did not know what he had in his possession on Sunday. I simply made a general demand on him for all the papers he had in his possession which related to the division.

Mr. MADISON. But you knew he had some letters which he was holding out?

Mr. CHRISTENSEN. Yes, sir; because he had them before him, and told me that they related to the office, but he would not turn them over until he had secured a receipt.

Senator SUTHERLAND. Until he had what?

[

requested Glavis to advise me of the whereabouts of these letters, he informed me that he did not know, but assumed that they were scattered through the different cases in the files, but none of those letters have been located. It may be that they are in possession of Bowman.

When I saw your telegram to Sheridan, I thought of writing Bowman, requesting him to return to me all letters relating to the Cunningham coal cases; but, as I did not know where Bowman stood in the matter, I decided not to do that, and that it would be advisable to have Colter confer with him.

I am attaching hereto copies of two telegrams from Glavis to Clerk Shartell directing Bowman to report to him in Chicago. This, you will note, was upon Glavis's return from Beverly. Miss Shartell stated that she did not know what papers he had in his possession at that time, but supposed that they related to the Mackey and McAlpine groups. I do not know whether Bowman ever had any of the said letters with him at Detroit, but I assumed from your telegram that such was the case.

Very respectfully,

Chief of Field Division.

ALBANY, N. Y., August 24, 1909.

TO ELLA SHARTELL,
219 Federal Building, Seattle, Wash.:

Have Bowman proceed immediately Chicago, and meet me at Great Northern Hotel.

GLAVIS, Chief.

(O. B. Gov't. rates. 23 words—46 cents.)

CHICAGO, August 26, 1909.

TO ELLA SHARTELL,
219 Federal Building, Seattle, Wash.:

Wire train and date Bowman left Seattle for Chicago. I expect to arrive next Thursday.

GLAVIS, Chief.

(O. B. Gov't. rates. 26 pd. Gov't. rates, 47 cents.)

Mr. MADISON. What was stated in that letter about the Cunningham letters being distributed through the files?

Mr. CHRISTENSEN. I will read that portion of it again.

Mr. MADISON. Yes; if you please.

When I requested Glavis to advise me of the whereabouts of these letters, he informed me that he did not know, but assumed they were scattered through the different pages in the files.

Mr. MADISON. That letter was from you?

Mr. CHRISTENSEN. Yes, sir.

Mr. MADISON. You say in that letter Glavis told you he assumed that the different letters had been distributed through the files?

Mr. CHRISTENSEN. Yes, sir.

Mr. MADISON. That is, in their proper letters?

Mr. CHRISTENSEN. With the proper cases, as we have cases relating to them, in the coal claims for instance, I assume that the letters from the claimants would be with that case, something of that kind.

Mr. DENBY. Were those files searched?

Mr. CHRISTENSEN. No, sir.

Senator PURCELL. Did you receipt for the file?

Mr. CHRISTENSEN. Yes, sir; I receipted for the file.

Senator PURCELL. Did you open it?

Mr. CHRISTENSEN. Why, the missing file, or the case in which these letters must have been, were dictated by Mr. Glavis, himself, to Miss Shartell. They were checked over by the agent—

Senator PURCELL. But you receipted for them?

Mr. CHRISTENSEN. I do not know about the custom. I do not know that I have ever known of such a case. But usually when we take records from an office we keep a copy of them, especially if they are in connection with any cases.

Mr. JAMES. So that it would have been customary, then, to have kept a copy of these?

Mr. CHRISTENSEN. Yes, sir; it would have been customary if they related to any case or were of any importance.

Mr. JAMES. If they were of any importance they would keep copies and let the originals go, so that if the originals were lost they would have the copies of them?

Mr. CHRISTENSEN. Yes, sir.

Mr. MADISON. When had these letters from Juneau arrived at the Seattle office?

Mr. CHRISTENSEN. Mr. Bowman brought them, I understand, from Juneau some time during the month of August. I think he arrived in Seattle August 10.

Mr. MADISON. And this receipt of which you had a copy made, or of which Glavis had a copy made, was dated some time either in July or August?

Mr. CHRISTENSEN. Yes, sir.

Mr. MADISON. It must have been?

Mr. CHRISTENSEN. Yes, sir. August 6, I think, is the date of the receipt.

Mr. MADISON. So then these letters, which were called to your attention at that time, were really recent arrivals in the office?

Mr. CHRISTENSEN. Yes, sir.

Mr. MADISON. Well, now, is it usual that the letters which are recently brought into the office are misplaced in the files, or that the old stuff is misplaced? As a matter of fact would it not be a natural thing that letters which had recently arrived would be easily found?

Mr. CHRISTENSEN. Well, Mr. Glavis may have used them in connection with the different cases. He may have taken them and put them with the case to which they belonged.

Mr. MADISON. Well, now, did it not cause a suspicion to arise in your mind when these letters that had so recently come there were missing that there must be something the matter about the affair?

Mr. CHRISTENSEN. No, sir.

Mr. MADISON. It did not occur to you as a suspicious circumstance at all?

Mr. CHRISTENSEN. No, sir.

Mr. MADISON. You just thought that they might be mislaid and that probably they would turn up somewhere?

Mr. CHRISTENSEN. Yes, sir; that was my idea.

Mr. MADISON. Had you made a search generally throughout your office to see whether or not you could find them at that time?

Mr. CHRISTENSEN. No. As I said before, I was not acquainted with the office, but I asked Miss Shartell Monday morning if she knew where they were. There was not any search made unless Mr. Maguire—I think probably Maguire made a search on Sunday around among the papers generally. Of course, with papers of that kind a man not being acquainted with the routine office work would be at a loss to know where to go to look for them.

Mr. JAMES. Did Miss Shartell tell you that she had made copies of those papers recently for Mr. Glavis?

Mr. CHRISTENSEN. She did not. The first time I knew she copied them was after I had found them, and at the time I was preparing my report to Mr. Schwartz that I had found them.

Mr. MADISON. Miss Shartell, as a matter of fact, had copied those just a few days before you came there, had she not?

Mr. CHRISTENSEN. I believe so; yes, sir.

Mr. MADISON. On the 18th wasn't it, or on the 16th, somewhere along there.

The CHAIRMAN. I think she said on the 8th or 9th.

Mr. CHRISTENSEN. I think so.

Mr. MADISON. Well, I am not certain about that.

Mr. CHRISTENSEN. I think she said she copied them along about the 8th or 9th.

Mr. VERTREES. She said about a week after the letter was written—

Mr. MADISON. I think it was within ten days from the time you came there that she had, as a matter of fact, copied those letters.

Mr. CHRISTENSEN. Yes, sir.

Mr. MADISON. She was there when you came there, and you asked her about the letters, did you not?

Mr. CHRISTENSEN. Yes, sir.

Mr. MADISON. As to where they were?

Mr. CHRISTENSEN. Yes, sir; asked her if she knew where they were?

Mr. MADISON. Now, what reply did she give you?

Mr. CHRISTENSEN. She said that she did not know.

Mr. MADISON. Well, did she say anything about having copied them within the last ten days?

Mr. CHRISTENSEN. No, sir.

Mr. MADISON. Always kept that from you?

Mr. CHRISTENSEN. Yes, sir.

Mr. MADISON. That is all.

Mr. VERTREES. Now, Mr. Christensen, if I understand you correctly, you have stated that when Mr. Glavis left the office Saturday, the 18th, he took with him to his room a number of official papers that he declined to let you see?

Mr. CHRISTENSEN. Yes, sir.

Mr. VERTREES. So that, when you made your demand Sunday, you knew that he had a number of papers, but you did not know what they were; is that correct?

Mr. CHRISTENSEN. That is correct.

Mr. VERTREES. You presented that letter, as a general demand for all that he did have, and you presented it in person; is that correct?

Mr. CHRISTENSEN. I did.

Mr. VERTREES. Now, when you presented that letter, did you have any knowledge specially, of these 24 missing letters that are described in the letter of the 20th?

Mr. CHRISTENSEN. No, sir; it had not been called to my attention at that time.

Mr. VERTREES. But they were brought to your attention before his return to your office on the morning of the 20th; is that correct?

Mr. CHRISTENSEN. Yes, sir; they had been brought to my attention in the meantime.

Mr. VERTREES. And did you then bring this specially to his attention?

Mr. CHRISTENSEN. I did.

Mr. VERTREES. And his reply was what?

Mr. CHRISTENSEN. That he did not know where they were; that he assumed they were somewhere in the office, probably among the cases.

Mr. VERTREES. I believe you have stated that before you left, you asked him the general question if he had turned over to you all that he had?

Mr. CHRISTENSEN. Yes, sir; I did.

Mr. VERTREES. And what did he say?

Mr. CHRISTENSEN. He replied that he had.

Mr. VERTREES. Did you say that you did not see him any more, then, for some time?

Mr. CHRISTENSEN. Yes, sir. I do not recall when I did see him next. He went away shortly afterwards. It must have been a month or six weeks afterwards.

Mr. VERTREES. You completed the receipt the next day afterwards and sent it to him through Mr. Andrew Kennedy, as you have stated?

Mr. CHRISTENSEN. I held it there for him from the 21st until the 23d, when Mr. Kennedy had returned from Alaska, and he had left word with Mr. Kennedy what to do with the receipt.

Mr. VERTREES. And you turned it over to him?

Mr. CHRISTENSEN. I did.

Mr. VERTREES. Did you receive any reply from Mr. Glavis in respect to that receipt in any way?

Mr. CHRISTENSEN. No; I did not.

Mr. VERTREES. Now, what next, if anything, was done in the office with respect to these missing letters?

Mr. CHRISTENSEN. Mr. Schwartz came out to Seattle along about the 23d or 24th.

Mr. VERTREES. Of September, 1909?

Mr. CHRISTENSEN. Yes, sir. I called his attention to the trouble I had had with Mr. Glavis in getting all the records and we talked it over generally then, and he felt rather suspicious, and I did, after we had talked about it, and we suggested, or I suggested to him, to get out a search warrant; I told Mr. Schwartz that we probably ought to do that to protect the interests of the Government. But he said he did not think that was advisable; that it would be misconstrued by the press; that Glavis would probably immediately advertise it; that he had some records which we were afraid to have published. So no action was taken and we let the matter drop.

Mr. VERTREES. Well, now, what next—did you communicate with Mr. Schwartz, your chief, or he with you on the subject?

Mr. CHRISTENSEN. Some time afterwards, on October 8, Mr. Schwartz wired Mr. Sheridan something in connection with the Cunningham letters.

Mr. VERTREES. Before you state that, state what relation Mr. Sheridan had to the Cunningham matters then.

Mr. CHRISTENSEN. Mr. Schwartz reported about the same time that Mr. Sheridan had entire charge of the Cunningham cases.

Mr. VERTREES. That the charge of the Cunningham cases had been given over to Mr. Sheridan?

Mr. CHRISTENSEN. Yes, sir; it had.

Mr. VERTREES. Now, about what time had that been done, do you now?

Mr. CHRISTENSEN. Well, now, it was some time previous to the time came up there.

Mr. VERTREES. And Mr. Schwartz, for that reason, took it up with Mr. Sheridan?

Mr. CHRISTENSEN. Yes, sir.

Mr. VERTREES. Well, if you know, what passed between them on his subject of the missing papers?

Mr. CHRISTENSEN. Why, telegrams and letters after that then were sent between Mr. Sheridan and Mr. Schwartz and between myself and Mr. Schwartz.

Mr. VERTREES. Have you those telegrams and letters, or copies of them?

Mr. CHRISTENSEN. I have.

Mr. VERTREES. Before you give them, state what the general nature of them is, in order that the committee will understand what the general tenor of them is—what is it?

Mr. CHRISTENSEN. The letters and telegrams?

Mr. VERTREES. Yes.

Mr. CHRISTENSEN. They relate to the missing records and the manner of the investigation after it was begun, and after Mr. Schwartz had called it to our attention.

Mr. VERTREES. Well, it would be a little tedious, but in view of some questions that were made, from which the implication could be drawn that Mr. Christensen had probably put those letters in that box, and in view of that I think I should take up this correspondence to show how active and energetic they were back there before any question arose, and then we will have the correspondence—

The CHAIRMAN. Please proceed.

Mr. VERTREES. Begin there with the first one.

Mr. CHRISTENSEN. This telegram is dated Washington, D. C., October 8, 1909.

The CHAIRMAN. A little louder, please.

Mr. CHRISTENSEN. This telegram is dated Washington, D. C., October 8, 1909.

Senator PURCELL. October 8?

Mr. CHRISTENSEN. Yes, sir; October 8.

Mr. MADISON. What is the date of that?

Mr. CHRISTENSEN. October 8.

Mr. VERTREES. We offer that in evidence.

The CHAIRMAN. It is admitted.

The telegram and translation are as follows:)

[Telegram.—Received at Seattle, Washington.—51 BO D\$ 67 Paid. Govt.]

WASHINGTON, D. C., October 8, 1909.

Special Agent SHERIDAN,
Federal Building, Seattle, Wash.:

If you see Bowman question him closely as to when Krifac supplied him with summamkyin letters and for what purpose he had them in Detroit. My recollection is Krifac gave you receipt showing certain letters in Bowman's possession. I do not know that any Detroit people are interested in summamkyin claims. If you do not see Bowman advise Christensen hereof.

SCHWARTZ, Chief—(1.40 p. m.)

2688 INVESTIGATION INTERIOR DEPT. AND BUREAU OF FORESTRY.

[Telegram.—Received at Seattle, Washington.—51 BO DS 67 Paid. Govt.]

WASHINGTON, D. C., October 8, 1909

Special Agent SHERIDAN,
Federal Building, Seattle, Wash.:

If you see Bowman question him closely as to when Glavis supplied him with Cunningham letters and for what purpose he had them in Detroit. My recollection is Glavis gave you receipt showing certain letters in Bowman's possession. I do not know that any Detroit people are interested in Cunningham claims. If you do not see Bowman advise Christensen hereof.

SCHWARTZ, Chief—(1.40 p. m.)

Mr. CHRISTENSEN. That telegram was called to my attention on October 11 by Mr. Sheridan. Then on that day I wired Mr. Schwartz as follows:

SEATTLE, WASH., October 11, 1909

SCHWARTZ, General Land Office, Washington, D. C.

In the matter of your letter (wire) to Sheridan eighth, accordance with instructions your office Bowman has been instructed to confer with Colter regarding Chicago Alaska case (cases)—suggest Colter question him concerning matter mentioned.

CHRISTENSEN, Chief.

Mr. CHRISTENSEN. They have it wrong here; it should be "wire" and they have it "letter."

Mr. VERTREES. We offer that, Mr. Chairman.

The CHAIRMAN. It is admitted.

Mr. CHRISTENSEN. I wrote a telegram on October 12, which will be referred to in my letter of October 12, dated Washington, D. C., October 12, 1909, to Special Agent Christensen, as follows:

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, October 12, 1909

Special Agent CHRISTENSEN, Portland, Oreg.

Has Pestelo Bowman started for Duluth? If not, can you locate him? Cedeg.

Chief of Field Service.

(Translation: Has Special Agent Bowman started for Duluth? If not, can you locate him? Answer by wire quick.)

I have not my reply to that, but I told him that he had not been located. I have not this telegram here.

Mr. BRANDEIS. That is from Mr. Schwartz to you?

Mr. CHRISTENSEN. Yes; from Mr. Schwartz to me, on October 12. I wrote Mr. Schwartz as follows, from Portland, Oreg.:

PORTLAND, OREG., October 12, 1909.

Hon. H. H. SCHWARTZ,
Chief of Field Service, Washington, D. C.

MY DEAR SCHWARTZ: Referring to your telegram of October 8, 1909, to Special Agent Sheridan, in which you suggest that if he saw Bowman he question him concerning certain Cunningham letters, and to my reply of October 11, in which I stated that Bowman had been instructed to report to Colter and suggested that Colter should question him concerning the matter mentioned, also to your telegram of even date relative to the matter, I have to advise that Bowman has been working out of Detroit for some time, and on Monday I received a letter from him requesting that certain information relative to the Foster and Watson groups be forwarded to him at the Saratoga Hotel, in Chicago. I wired him on the 8th at Detroit to proceed to Duluth, and after I received his letter to forward the information to the Saratoga Hotel, Chicago, I wired him at that place also, but I have not yet been advised whether he received those telegrams.

I am not sure that I know to what letters you refer. You will note from my receipt to Glavis that several letters from Cunningham are missing. These letters were originally secured by Bowman from the Juneau, Alaska, land office. When I

requested Glavis to advise me of the whereabouts of these letters, he informed me that he did not know, but assumed that they were scattered through the different cases in the files, but none of those letters have been located. It may be that they are in possession of Bowman.

When I saw your telegram to Sheridan, I thought of writing Bowman, requesting him to return to me all letters relating to the Cunningham coal cases; but, as I did not know where Bowman stood in the matter, I decided not to do that, and that it would be advisable to have Colter confer with him.

I am attaching hereto copies of two telegrams from Glavis to Clerk Shartell directing Bowman to report to him in Chicago. This, you will note, was upon Glavis's return from Beverly. Miss Shartell stated that she did not know what papers he had in his possession at that time, but supposed that they related to the Mackey and McAlpine groups. I do not know whether Bowman ever had any of the said letters with him at Detroit, but I assumed from your telegram that such was the case.

Very respectfully,

Chief of Field Division.

ALBANY, N. Y., August 24, 1909.

To ELLA SHARTELL,
219 Federal Building, Seattle, Wash.:

Have Bowman proceed immediately Chicago, and meet me at Great Northern Hotel.

GLAVIS, Chief.

(O. B. Gov't. rates. 23 words—46 cents.)

CHICAGO, August 26, 1909.

To ELLA SHARTELL,
219 Federal Building, Seattle, Wash.:

Wire train and date Bowman left Seattle for Chicago. I expect to arrive next Thursday.

GLAVIS, Chief.

(O. B. Gov't. rates. 26 pd. Gov't. rates, 47 cents.)

Mr. MADISON. What was stated in that letter about the Cunningham letters being distributed through the files?

Mr. CHRISTENSEN. I will read that portion of it again.

Mr. MADISON. Yes; if you please.

When I requested Glavis to advise me of the whereabouts of these letters, he informed me that he did not know, but assumed they were scattered through the different pages in the files.

Mr. MADISON. That letter was from you?

Mr. CHRISTENSEN. Yes, sir.

Mr. MADISON. You say in that letter Glavis told you he assumed that the different letters had been distributed through the files?

Mr. CHRISTENSEN. Yes, sir.

Mr. MADISON. That is, in their proper letters?

Mr. CHRISTENSEN. With the proper cases, as we have cases relating to them, in the coal claims for instance, I assume that the letters from the claimants would be with that case, something of that kind.

Mr. DENBY. Were those files searched?

Mr. CHRISTENSEN. No, sir.

Senator PURCELL. Did you receipt for the file?

Mr. CHRISTENSEN. Yes, sir; I receipted for the file.

Senator PURCELL. Did you open it?

Mr. CHRISTENSEN. Why, the missing file, or the case in which these letters must have been, were dictated by Mr. Glavis, himself, to Miss Shartell. They were checked over by the agent—

Senator PURCELL. But you receipted for them?

Mr. MADISON. Then the fact is that on Monday, the 20th, Mr. Glavis did return to you or deliver to you, to your entire satisfaction, all the records of that office except these 24 letters, and that he said "they are distributed through the files," and that you accepted that as all right and told him very well; that is the situation?

Mr. CHRISTENSEN. Yes, sir; with the copy of the letter included.

Mr. DENBY. Just a minute. I do not think you testified at any time that Mr. Glavis said they were distributed through the files. He said he assumed they were distributed through the files; and he did not know where they were?

Mr. CHRISTENSEN. That is correct, and nobody stated that they were.

Mr. McCALL. Were there very many letters in those papers turned over in the aggregate, in all the files? Were there many letters turned over to you?

Mr. CHRISTENSEN. On Monday morning, do you mean?

Mr. McCALL. No; all the collection in the office.

Mr. CHRISTENSEN. Oh, yes, sir.

Mr. McCALL. Were there a good many letters?

Mr. CHRISTENSEN. There were a large number; yes, sir.

Mr. McCALL. Did you verify all the letters in all the files?

Mr. CHRISTENSEN. No, sir; there was what we called the miscellaneous files, that were not listed at all. They are merely mentioned in a general way in the receipt.

Senator SUTHERLAND. As I understand, your attention would not have been particularly directed to these specific letters except for the fact that you found the list of a lot of letters that came from Juneau, and you noticed the absence of those specific letters from the list?

Mr. CHRISTENSEN. That was the only way that they were brought to my attention. If Glavis had not listed them I would not have found them.

Senator PURCELL. He found them in the list of Glavis, and McGuire found that they were missing from Glavis's list. Glavis presented them for signature. Is that correct?

Mr. CHRISTENSEN. No, sir.

Senator PURCELL. Then we are mixed again.

Mr. VERTREES. Suppose you let the witness restate it.

Mr. CHRISTENSEN. The only way the letters were brought to my attention, or the reason that they were, was because they were specifically mentioned. A list of them was made.

Senator PURCELL. Specifically mentioned where?

Mr. CHRISTENSEN. That was a list of the contents of that envelope that had been handed to the stenographer by Mr. Glavis.

Senator PURCELL. Who made it?

Mr. CHRISTENSEN. Miss Schwinnen made the list.

Senator SUTHERLAND. But it purported to be a list of papers that Bowman had brought from Juneau?

Mr. CHRISTENSEN. Yes, sir.

Senator PURCELL. At whose request did Miss Schwinnen make this list?

Mr. CHRISTENSEN. At Mr. Glavis's request.

Senator PURCELL. Then it was a list made up by Glavis, or under his direction, which purported to enumerate the contents of that envelope?

Mr. CHRISTENSEN. I do not know when it was—some time during July or August.

Senator PURCELL. Did he take them after you took possession of the office or before?

Mr. CHRISTENSEN. No, sir; before.

Mr. MADISON. You knew of the Cunningham cases before that, did you not?

Mr. CHRISTENSEN. Yes, sir; I had heard about them.

Senator PURCELL. And you wrote a receipt for the Cunningham files before you got them in your possession?

Mr. CHRISTENSEN. I did not receipt for the Cunningham files; they were not included in the receipt.

Senator PURCELL. Were not the papers in the office files, or anything of that kind?

Mr. CHRISTENSEN. No, sir; no papers whatever.

Senator PURCELL. I thought you testified a moment ago, in response to a question from Mr. Madison, that all you had to do to discover whether or not the letters were there was to turn to the files?

Mr. CHRISTENSEN. Yes, sir; but that was a general question to me.

Senator PURCELL. Did you not say that that was all you would have to do?

Mr. CHRISTENSEN. Yes, sir.

Senator PURCELL. Now you state the files were not there.

Mr. CHRISTENSEN. He referred to the general files, and I replied to that question in a general way; but, as I said, none of the Cunningham papers were there at all. They were all in the possession of Mr. Sheridan.

Mr. MADISON. You knew that when Glavis told you that you would find the letters distributed somewhere through the files?

Mr. CHRISTENSEN. Yes, sir.

Mr. MADISON. You knew that the Cunningham cases were not here?

Mr. CHRISTENSEN. Yes, sir.

Mr. MADISON. Now, then, this letter of yours here of the 20th says:

In the list of letters received by Special Agent A. R. Bowman from the land office at Juneau, Alaska, the following letters are missing.

Mr. CHRISTENSEN. Yes, sir.

Mr. MADISON. You knew that they had come from Bowman.

Mr. CHRISTENSEN. Yes, sir; I assumed that they had.

Mr. MADISON. You knew that they were from Juneau, Alaska. You knew that, did you not?

Mr. CHRISTENSEN. Yes, sir.

Mr. MADISON. And you knew that the Cunningham case was then a live case; you knew that it was a coal case in Alaska?

Mr. CHRISTENSEN. Yes, sir.

Mr. MADISON. Here is Clarence Cunningham's name nine times in this letter. Did it not at once suggest to you that this must be in reference to the Clarence Cunningham coal cases, so called, or the Clarence Cunningham group of mines in Alaska?

Mr. CHRISTENSEN. I do not know that I thought of it that way.

Mr. MADISON. But would not that be the natural thing?

Mr. CHRISTENSEN. You would think so; yes, sir.

Mr. MADISON. Now, then, if it had occurred to a person who looked over that list of letters that these letters referred to the Cunningham cases in Alaska, and a man had told that person that these letters must have been distributed in the files, then would not that person, being a chief of the division like yourself, would he not know where to go at once to find those letters if they were there?

Mr. CHRISTENSEN. I would like to have that question repeated.

Mr. MADISON. Well, let me repeat it again. The question was somewhat long, and I will try to abridge it. I do not want to take up too much time. You had been in the service some time, had you not?

Mr. CHRISTENSEN. Yes, sir.

Mr. MADISON. Now, being in the service for some time, and being familiar with the Cunningham cases, and being familiar generally with the work of the Land Office and of a division of the Land Office, when the matter was brought to your attention that these letters, a number of them, were with regard to Clarence Cunningham, that they were from Juneau, Alaska; that they had been brought down by the special inspector from that country—from Juneau, Alaska. Now, then, assuming all those things could be true, I ask you if it would not be the natural thing on your part, it having been told you that the letters were distributed in the files, would it not be the natural thing on your part to know in advance where to go for the purpose of finding those letters in the files?

Mr. CHRISTENSEN. Yes, sir; I assume that you are right there, but it was not done. I took his word for it, and did not take any further action.

Senator SUTHERLAND. Mr. Christensen, in your talk with Mr. Glavis, when you were calling his attention specifically to the absence of these letters, did he at any time explain to you that they had been in his possession, or he had copies of them made as recently as a week or ten days?

Mr. CHRISTENSEN. He did not.

Senator SUTHERLAND. Did he refer you to Miss Shartell for that information?

Mr. CHRISTENSEN. He did not.

Senator SUTHERLAND. These letters, that came down from Alaska, brought by Mr. Bowman, as I understand it, were all in one pouch?

Mr. CHRISTENSEN. Yes, sir.

Senator SUTHERLAND. And the list of what the pouch was supposed to contain was in the pouch also?

Mr. CHRISTENSEN. Yes, sir; that is, it was an envelope instead of a pouch.

Senator SUTHERLAND. Now, in that pouch you did find some papers enumerated in the list?

Mr. CHRISTENSEN. Yes, sir.

Senator SUTHERLAND. What proportion of them, about?

Mr. CHRISTENSEN. They were all found except these 24 letters.

Senator SUTHERLAND. Yes; but that does not tell me anything. What proportion of the papers were found?

Mr. CHRISTENSEN. I think about a quarter—I think there were 167 listed.

Senator SUTHERLAND. And you found all but 24 in the pouch?

Mr. CHRISTENSEN. Yes, sir.

Senator SUTHERLAND. Now, these various papers, did they or did they not relate to numerous cases?

Mr. CHRISTENSEN. Yes, sir; they did.

Senator SUTHERLAND. They had not been distributed among the cases?

Mr. CHRISTENSEN. They had not.

Senator SUTHERLAND. You found that from this pouch these 24 letters had been omitted in some way?

Mr. CHRISTENSEN. Yes, sir.

Senator SUTHERLAND. Mr. Glavis at no time made any explanation to you about it?

Mr. CHRISTENSEN. No, sir; only in so far as he related to me Monday morning—

Mr. DENBY. What made you check the contents of that envelope?

Mr. CHRISTENSEN. Because they had been specifically enumerated. Glavis had handed the envelope with receipt fastened on top of it to Spaulding to list them, and when it was listed I handed it to McGuire to check it over.

Senator PURCELL. Well, now, as I understand you, you discovered this on Saturday?

Mr. CHRISTENSEN. No; it was not called to my attention until some time Sunday.

Senator PURCELL. Didn't you say you called up the district attorney on Saturday night and told him about this matter, and asked him whether some action should not be taken to preserve the rights of the Government?

Mr. CHRISTENSEN. Yes, sir; but I did not have these letters in mind. I did not know they were missing at that time. I had in mind all the records that Glavis had in his possession at that time, but, as I said before, I did not know what he had in his possession, as he had declined to allow me to see them.

Senator PURCELL. Did you not leave the impression that it was these specific letters that you talked to the district attorney about? You do not want to be understood that way?

Mr. CHRISTENSEN. No, sir; I do not. I would like to have that understood clearly.

Mr. McCALL. I think that he said that he—

Senator SUTHERLAND. He does not make that quite clear to me.

The CHAIRMAN. He made it perfectly clear at the time he met Glavis that he found Glavis with a certain bunch of letters and documents which he declined to deliver then, and he wrote him a letter without knowing what they were. That is the letter that has been read. Afterwards, the next day, Sunday, in looking over that jacket from Juneau he found a copy of the receipt?

Mr. CHRISTENSEN. Yes, sir.

The CHAIRMAN. That Mr. Bowman had given to the land officers there for the papers. And in going over that copy of the receipt he found these 23 or 24 letters missing. Now, that is the way I understand the evidence that is in.

Mr. CHRISTENSEN. That is correct with the exception that you have the date wrong. I wrote this letter to Glavis on the 19th, and on the same date, after the letter had been sent, we were in the office in the afternoon, and Mr. McGuire called these missing letters to my attention. He called attention to the fact that these letters were missing.

Mr. MADISON. Then the fact is that on Monday, the 20th, Mr. Glavis did return to you or deliver to you, to your entire satisfaction, all the records of that office except these 24 letters, and that he said "they are distributed through the files," and that you accepted that as all right and told him very well; that is the situation?

Mr. CHRISTENSEN. Yes, sir; with the copy of the letter included.

Mr. DENBY. Just a minute. I do not think you testified at any time that Mr. Glavis said they were distributed through the files. He said he assumed they were distributed through the files; and he did not know where they were?

Mr. CHRISTENSEN. That is correct, and nobody stated that they were.

Mr. McCALL. Were there very many letters in those papers turned over in the aggregate, in all the files? Were there many letters turned over to you?

Mr. CHRISTENSEN. On Monday morning, do you mean?

Mr. McCALL. No; all the collection in the office.

Mr. CHRISTENSEN. Oh, yes, sir.

Mr. McCALL. Were there a good many letters?

Mr. CHRISTENSEN. There were a large number; yes, sir.

Mr. McCALL. Did you verify all the letters in all the files?

Mr. CHRISTENSEN. No, sir; there was what we called the miscellaneous files, that were not listed at all. They are merely mentioned in a general way in the receipt.

Senator SUTHERLAND. As I understand, your attention would not have been particularly directed to these specific letters except for the fact that you found the list of a lot of letters that came from Juneau, and you noticed the absence of those specific letters from the list?

Mr. CHRISTENSEN. That was the only way that they were brought to my attention. If Glavis had not listed them I would not have found them.

Senator PURCELL. He found them in the list of Glavis, and McGuire found that they were missing from Glavis's list. Glavis presented them for signature. Is that correct?

Mr. CHRISTENSEN. No, sir.

Senator PURCELL. Then we are mixed again.

Mr. VERTREES. Suppose you let the witness restate it.

Mr. CHRISTENSEN. The only way the letters were brought to my attention, or the reason that they were, was because they were specifically mentioned. A list of them was made.

Senator PURCELL. Specifically mentioned where?

Mr. CHRISTENSEN. That was a list of the contents of that envelope that had been handed to the stenographer by Mr. Glavis.

Senator PURCELL. Who made it?

Mr. CHRISTENSEN. Miss Schwinnen made the list.

Senator SUTHERLAND. But it purported to be a list of papers that Bowman had brought from Juneau?

Mr. CHRISTENSEN. Yes, sir.

Senator PURCELL. At whose request did Miss Schwinnen make this list?

Mr. CHRISTENSEN. At Mr. Glavis's request.

Senator PURCELL. Then it was a list made up by Glavis, or under his direction, which purported to enumerate the contents of that envelope?

Mr. CHRISTENSEN. Yes, sir; but she did not have——

Senator PURCELL. Just a moment. Is that correct?

Mr. CHRISTENSEN. Yes, sir.

Senator PURCELL. And in that list as made up were included those letters that were missing?

Mr. CHRISTENSEN. Yes, sir.

Senator PURCELL. Now, when that list was presented to you for signature——

Mr. CHRISTENSEN. It was not presented to me for signature.

Senator PURCELL. Was that not intended to be a receipt?

Mr. CHRISTENSEN. Yes, sir; it was intended to be included in that list.

Senator PURCELL. That was on a separate piece of paper?

Mr. CHRISTENSEN. Yes, sir.

Senator PURCELL. And the receipt referred to it as a statement of what it contained?

Mr. CHRISTENSEN. Yes, sir.

Senator PURCELL. What it was for. Now, you say you turned that over to Mr. McGuire and he did not discover that those letters—those Cunningham letters—were not there. Is that correct?

Mr. CHRISTENSEN. Yes, sir.

The CHAIRMAN. You stated, Mr. Christensen, that there were about one hundred and eight-odd letters or documents?

Mr. CHRISTENSEN. No, sir; something over a hundred. I am not positive as to that.

The CHAIRMAN. In that bundle you found a copy of the receipt given by Mr. Bowman to the chief of the land office?

Mr. CHRISTENSEN. Yes, sir.

The CHAIRMAN. Giving the list of those papers?

Mr. CHRISTENSEN. Yes, sir.

The CHAIRMAN. And it was from that copy or that receipt that you found out that those papers were missing?

Mr. CHRISTENSEN. Yes, sir.

The CHAIRMAN. That is what I understood you to say.

Mr. CHRISTENSEN. That is correct.

Mr. GRAHAM. We are mixed again.

Senator PURCELL. Mr. Christensen, you understood what the chairman asked you, did you not?

Mr. CHRISTENSEN. Yes, sir.

The CHAIRMAN. Will you allow me to go one question further and I will show you the situation. She made a copy of that receipt, did she not?

Mr. CHRISTENSEN. Yes, sir; just copied the receipt.

The CHAIRMAN. She copied the receipt for Mr. Glavis?

Mr. CHRISTENSEN. Yes, sir.

The CHAIRMAN. And that is the copy the Senator refers to?

Mr. CHRISTENSEN. Yes, sir.

Mr. GRAHAM. That is what you call the Glavis list, is it, that copy?

Mr. CHRISTENSEN. What list do you mean?

Mr. GRAHAM. The Schwinnen list.

Mr. CHRISTENSEN. Yes, sir; the one she prepared at his request. She simply made a copy of that receipt.

Senator PURCELL. Then it was a receipt that was made up under the direction of Glavis, you say?

Mr. CHRISTENSEN. Yes, sir; he requested her to make a copy of that receipt.

Senator PURCELL. And it was, in effect, a copy of the Bowman receipt?

Mr. CHRISTENSEN. Yes, sir.

Senator PURCELL. It included the letters that were missing?

Mr. CHRISTENSEN. Yes, sir.

Senator PURCELL. And then it was Glavis's receipt that called your attention to it, was it?

Mr. CHRISTENSEN. Yes, sir.

Mr. DENBY. It was a copy of the Bowman receipt, was it not?

Senator PURCELL. It does not make any material difference about that.

Mr. VERTREES. I would like to ask you a few questions. It is true, Mr. Christensen, is it not, that entered claims leave the local agents and go to Washington; that is, the papers do?

Mr. CHRISTENSEN. Yes, sir. You mean the final entry?

Mr. VERTREES. The final entry, and the Cunningham claims were in that class, were they not?

Mr. CHRISTENSEN. Yes, sir.

Mr. VERTREES. And Mr. Sheridan, as special agent, was then investigating those claims?

Mr. CHRISTENSEN. Yes, sir.

Mr. VERTREES. He had the papers?

Mr. CHRISTENSEN. He did.

Mr. VERTREES. And they were not in this office at all at that time?

Mr. CHRISTENSEN. No, sir.

Mr. VERTREES. Now, you yourself were a stranger to this office: you came down there on the 16th without knowing anything about it. Is that correct?

Mr. CHRISTENSEN. That is correct.

Mr. VERTREES. And your receipt does not purport to cover the Cunningham papers, as such—the files?

Mr. CHRISTENSEN. It does not.

Mr. VERTREES. As I understand you, among the papers you did find there was a package which proved to be papers that Mr. Bowman, about the 12th of August, had gone to Juneau and brought down?

Mr. CHRISTENSEN. That is correct.

Mr. VERTREES. And in that package was a copy of the receipt which he had given to the official at Juneau for those papers. Is that correct, up to this point?

Mr. CHRISTENSEN. That is correct.

Mr. VERTREES. Now, when Mr. Glavis asked Miss Schwinnen to write out a list, what was that list that he requested? What did he want her to do and what did she do?

Mr. CHRISTENSEN. She simply made a copy of the receipt.

Mr. VERTREES. Of the Bowman receipt?

Mr. CHRISTENSEN. The Bowman receipt.

Mr. VERTREES. Now, then, Mr. McGuire then took that and went through the papers in the envelope to verify it and see whether they were there or not?

Mr. CHRISTENSEN. Yes, sir.

Mr. VERTREES. And he then found out that those twenty-four were not there, but were missing?

Mr. CHRISTENSEN. Yes, sir.

Mr. VERTREES. If I have understood you correctly, you thought in the aggregate the envelope should have contained something over 100 papers—107—something like that?

Mr. CHRISTENSEN. I believe that is correct.

Mr. VERTREES. Seventy-five or eighty of them being there and these others were missing, and that was brought to your attention when?

Mr. CHRISTENSEN. On Sunday some time.

Mr. VERTREES. After you had delivered this other paper to Mr. Glavis?

Mr. CHRISTENSEN. Yes, sir; after I had written the first letter to him on September 19.

Mr. VERTREES. Now you brought that special list in the form of a letter, which is set out here on page 455, as I understand you, to Mr. Glavis's attention when he brought in those papers in response to your general demand, on Monday morning before 9.30 o'clock?

Mr. CHRISTENSEN. Yes, sir; they were.

Mr. VERTREES. You did that, then, did you?

Mr. CHRISTENSEN. I did.

Mr. VERTREES. And he said he did not know where they were?

Mr. CHRISTENSEN. Yes, sir.

Mr. VERTREES. Did he say that he had, or that he did not have them?

Mr. CHRISTENSEN. He did not say anything about that. He simply said that he did not know where they were, but that he assumed that they would be somewhere in the office. That would be a very natural reply by anyone acquainted with it, because there were so many papers there.

Mr. VERTREES. And you took it at that, as being true?

Mr. CHRISTENSEN. I took his word for it; yes, sir.

Mr. VERTREES. Now, we had gotten, when the questions were asked you along that line, to the matter along in October.

Senator SUTHERLAND. Let me ask just one question. Did you at that time attach any more importance to those 24 letters than you did to any of the other letters and correspondence in the office?

Mr. CHRISTENSEN. I did not.

Mr. VERTREES. You were only, as I understand you, on the point of taking charge and giving receipts and settling the matter up?

Mr. CHRISTENSEN. That was all.

Mr. VERTREES. But along in October, as I understand you from the answers you have just made, the matter was taken up of doing something about this paper?

Mr. CHRISTENSEN. Yes, sir.

Mr. VERTREES. And you had gotten down to what date?

Mr. CHRISTENSEN. Down to October 12, I believe.

Mr. VERTREES. Now, what came next in the inquiry?

Mr. CHRISTENSEN. Then there was some correspondence between Mr. Sheridan and Mr. Colter, the chief of field division at Duluth. I have here a telegram dated Duluth, Minn., October 16, 1909, as follows:

[Telegram.]

DULUTH, MINN., Oct. 16, 1909.

JAMES W. SHERIDAN,
Special Agent, G. L. O., Federal Building, Seattle, Wash.

Pestelo bowman says did not assist Krifac Summamkyin cases. No letters given Bowman by Krifac. Bowman obtained some letters juneau land office and left them

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in office. Perhaps some of these to which Krifac refers. No report made by Bowman in summamkyin cases. Never had letters in Detroit never had any instructions or memoranda in Summamkyin cases.

COLTER.

9.24 a. m.

[Telegram.]

DULUTH, MINN., Oct. 16, 1909

JAMES W. SHERIDAN,
Special Agent, G. L. O., Federal Building, Seattle, Wash.

Special Agent Bowman says did not assist Glavis Cunningham cases. No letters given Bowman by Glavis. Bowman obtained some letters Juneau land office and left them in office. Perhaps some of these to which Glavis refers. No report made by Bowman in Cunningham cases. Never had letters in Detroit; never had any instructions or memoranda in Cunningham cases.

COLTER.

9.24 a. m.

Mr. VERTREES. We ask that that may go into the record.

The CHAIRMAN. That is admitted.

Mr. VERTREES. What next?

Mr. CHRISTENSEN. Then here is a letter from Mr. Colter to Mr. Sheridan, dated Chicago, Ill., October 23, 1909, as follows:

[Confidential.]

CHICAGO, ILL., October 23, 1909

Special Agent SHERIDAN, *Seattle, Wash.*

SIR: I am instructed by the chief of field service to write you fully in regard to conversation recently had with Special Agent Bowman relative to letters procured by him from the Juneau land office.

Mr. Bowman advised me that during his last trip to Juneau he was directed by Mr. Glavis to procure from the files of the register and receiver of that office all letters bearing on Alaska coal entries. He stated that he obtained some letters, the number of which he did not remember, and on returning to Seattle he found Glavis had gone East, and he left these letters in his (Bowman's) grip in the office at Seattle, and later on wrote Mr. Glavis that he left these letters in said grip. He seemed anxious that I not notify you where the grip was, as he said he did not want you to pull over his things in this grip. I questioned him closely about the contents of these letters, but he claimed to remember only one letter's contents, to wit: A letter written by Cunningham to the register and receiver telling them that the office at Washington had shown him (Cunningham) the reports of the agents, and that the office had assured him that his group of claims was all O. K. He denied that Glavis had turned over to him any letters or files of any kind.

However, after telling me this I noticed that he immediately sat down and wrote a letter to the young lady clerk who formerly was in Glavis's office, and perhaps that accounts for disappearance of grip if same is gone. It also might be that the grip is in Bowman's room at Seattle and he was giving me the wrong tip. I have also wired you this day in reference to this matter.

Very respectfully,

(Signed) S. J. COLTER,
Chief Field Division No. 8.

The CHAIRMAN. Who is that letter written by?

Mr. CHRISTENSEN. It is written by S. J. Colter, chief of field division No. 8, Duluth, Minn.

The CHAIRMAN. To whom?

Mr. CHRISTENSEN. To Special Agent Sheridan at Seattle.

Mr. VERTREES. We wish that to go into the record.

The CHAIRMAN. That is admitted.

Senator PURCELL. There have been three or four before this. The record will not show them.

The CHAIRMAN. Yes, sir; they have been admitted.

forgotten the fact, which he admitted, that this was a package of letters which I handed to him upon his arrival from Washington and suggested that he look through the package and take therefrom any correspondence that might be of assistance to him in connection with the Cunningham case, which he did, taking three letters, for which he gave me a receipt after I called his attention to the matter.

You will also no doubt recall that I spoke to you about the letters which were missing from the package and that I was considering at that time the advisability of getting out a search warrant in order that the missing letters might be located if possible.

I have kept these letters in mind on my trips to Seattle every time I have gone through the Alaska cases, with the hopes that I would discover them, but so far I have been unable to secure any trace of the letters which were missing.

As I advised you in my letter to you of the 12th instant, the missing letters are set forth in my receipt to Glavis.

This will no doubt explain Sheridan's letter to you more fully.

Very respectfully,

Chief of Field Division.

Mr. VERTREES. We ask that that be inserted in the record.

The CHAIRMAN. That is admitted.

Mr. VERTREES. Now, let us have the next.

Mr. CHRISTENSEN. Here is an original receipt which Mr. Sheridan gave me on October 18, 1909.

The CHAIRMAN. Containing a list of three letters?

Mr. CHRISTENSEN. Yes, sir.

Mr. VERTREES. We ask that that be inserted in the record.

The CHAIRMAN. That will be inserted in the records.

(The paper referred to is as follows:)

Received from Andrew Christensen, chief field division, General Land Office, the following correspondence relating to the Cunningham coal cases:

1. Letter from John W. Hartline to Mr. John W. Dudley, Juneau, Alaska, dated at Katalla, Alaska, May 15, 1906.
2. Letter from W. W. Baker to register United States land office, Juneau, Alaska, dated at Walla Walla, Wash., March 27, 1906.
3. Letter from S. C. Chezum to Hon. J. W. Dudley, register United States land office, Juneau, Alaska, dated Seattle, Wash., June 29, 1906.

JAMES M. SHERIDAN,
Special Agent, G. L. O.

SEATTLE, WASH., October 18, 1909.

Mr. CHRISTENSEN. Here is a copy of a letter from Mr. Schwartz to Mr. Sheridan, which is already in the record:

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., October 23, 1909.

Mr. JAMES M. SHERIDAN,
Special Agent, G. L. O., Seattle, Wash.

Sir: I have your letter of the 18th instant, advising you have found upon your desk a manila envelope containing some of the papers receipted for at Juneau by Mr. Bowman, and that 22 designated letters are missing from the package.

Chief of Field Division Colter has been directed to write to you the substance of Mr. Bowman's statement to him in reference to this package. My recollection is not clear, but it is that Bowman stated to Colter that he (Bowman) had left these letters in a sealed envelope in his suit case, but whether the suit case was left in the office or Bowman's hotel, I do not recall.

Bowman stated to Colter (last week) that he presumed the papers were still in his suit case, but indicated the hope that Colter would not advise Christensen, as he did not wish Christensen to go through his suit case.

Take this matter up with Mr. Christensen, and endeavor to ascertain just what became of these papers. Put Spaulding and Shartell through the third degree, and give Bowman the same dose—only a little more. You can put it up to Bowman flat that he is responsible for the papers. When you find out who abstracted the papers, and who has them, or find who surreptitiously returned the envelope containing only a part of them, submit a complete report to this office, and proper action will be taken.

The caption of Mr. Bowman's receipt reads as follows:

"Juneau, Alaska, August 6, 1909. I have this date received from the United States land office at this place the following letters addressed to the office on the following dates by the following persons."

I assume, therefore, that all of those letters were addressed to the register and receiver of the United States land office at Juneau, Alaska.

Mr. Bowman's receipt list is very vague, to say the least, and it gives no information other than the date of the letter and the party who wrote same, presumably to the Juneau land office.

On September 20, 1909, Mr. Christensen addressed a letter to Mr. Glavis calling attention to the fact that these letters were missing from the files of the Seattle office and requesting that Mr. Glavis advise him, if possible, what disposition was made of them and where they might be found. Mr. Christensen informs me that Mr. Glavis responded orally and informed him that he supposed these papers were somewhere about the office. He added that he did not have them.

Mr. Christensen, in receipting to Mr. Glavis for the records of the Seattle office, went carefully through all of the files of the office, so he informs me, and saw nothing of the missing correspondence.

It seems peculiar, to say the least, that in view of the fact that Mr. Clarence Cunningham and others concerned in the Cunningham group of coal claims one way or another were the writers of these letters, that they should have disappeared and no trace be found of them up to the present. It may be, of course, that they will come to light eventually, but I thought it well to call your attention to the fact that they are missing at present.

Very respectfully,

JAMES M. SHERIDAN,
Special Agent, G. L. O.

Mr. CHRISTENSEN. You will observe that he sets forth 21 letters there. It seems that in the meantime—

Mr. GRAHAM. You are not reading now, are you?

Mr. CHRISTENSEN. No, sir; I was just explaining this. It sets forth the missing letters.

The CHAIRMAN. Who is that letter written by?

Mr. CHRISTENSEN. By Mr. Sheridan to Mr. Schwartz.

The CHAIRMAN. You skipped the list in reading, did you not?

Mr. CHRISTENSEN. Yes, sir; I skipped the list in reading.

The CHAIRMAN. In that list are those 23 or 24 letters included?

Mr. CHRISTENSEN. There are 21 set forth there. It seems that 2 had been returned in the meantime, or that McGuire had overlooked them when he checked up the contents of the envelope.

Mr. VERTREES. We wish that letter to go in.

The CHAIRMAN. That whole letter will be printed, together with the list that was omitted by Mr. Christensen by reading.

Mr. MADISON. Is it true that you told Sheridan that you had looked carefully through the files of the office and had not been able to find those letters?

Mr. CHRISTENSEN. I do not know that I told him; I do not know where he got that from, because I did not, as a matter of fact, look through the files of the office at the time they were called to my attention.

Mr. MADISON. Therefore, you did not tell him that?

Mr. CHRISTENSEN. No, sir; I think he must be mistaken about that. I never talked to Sheridan that I know of concerning that particular statement. I do not know how he got it. On October 19, 1909, I wrote Mr. Schwartz as follows:

PORTLAND, OREG., October 19, 1909.

Hon. H. H. SCHWARTZ,
Chief of Field Service, Washington, D. C.

MY DEAR SCHWARTZ: Mr. Sheridan furnished me with copy of his letter to you of the 18th instant last evening, before leaving Seattle, relative to the matter of Bowman having in his possession certain Cunningham letters. Sheridan had evidently

forgotten the fact, which he admitted, that this was a package of letters which I handed to him upon his arrival from Washington and suggested that he look through the package and take therefrom any correspondence that might be of assistance to him in connection with the Cunningham case, which he did, taking three letters, for which he gave me a receipt after I called his attention to the matter.

You will also no doubt recall that I spoke to you about the letters which were missing from the package and that I was considering at that time the advisability of getting out a search warrant in order that the missing letters might be located if possible.

I have kept these letters in mind on my trips to Seattle every time I have gone through the Alaska cases, with the hopes that I would discover them, but so far I have been unable to secure any trace of the letters which were missing.

As I advised you in my letter to you of the 12th instant, the missing letters are set forth in my receipt to Glavis.

This will no doubt explain Sheridan's letter to you more fully.

Very respectfully,

Chief of Field Division.

Mr. VERTREES. We ask that that be inserted in the record.

The CHAIRMAN. That is admitted.

Mr. VERTREES. Now, let us have the next.

Mr. CHRISTENSEN. Here is an original receipt which Mr. Sheridan gave me on October 18, 1909.

The CHAIRMAN. Containing a list of three letters?

Mr. CHRISTENSEN. Yes, sir.

Mr. VERTREES. We ask that that be inserted in the record.

The CHAIRMAN. That will be inserted in the records.

(The paper referred to is as follows:)

Received from Andrew Christensen, chief field division, General Land Office, the following correspondence relating to the Cunningham coal cases:

1. Letter from John W. Hartline to Mr. John W. Dudley, Juneau, Alaska, dated at Katalla, Alaska, May 15, 1906.
2. Letter from W. W. Baker to register United States land office, Juneau, Alaska, dated at Walla Walla, Wash., March 27, 1906.
3. Letter from S. C. Chezum to Hon. J. W. Dudley, register United States land office, Juneau, Alaska, dated Seattle, Wash., June 29, 1906.

JAMES M. SHERIDAN,
Special Agent, G. L. O.

SEATTLE, WASH., October 18, 1909.

Mr. CHRISTENSEN. Here is a copy of a letter from Mr. Schwartz to Mr. Sheridan, which is already in the record:

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., October 23, 1909.

Mr. JAMES M. SHERIDAN,
Special Agent, G. L. O., Seattle, Wash.

Sir: I have your letter of the 18th instant, advising you have found upon your desk a manila envelope containing some of the papers receipted for at Juneau by Mr. Bowman, and that 22 designated letters are missing from the package.

Chief of Field Division Colter has been directed to write to you the substance of Mr. Bowman's statement to him in reference to this package. My recollection is not clear, but it is that Bowman stated to Colter that he (Bowman) had left these letters in a sealed envelope in his suit case, but whether the suit case was left in the office or Bowman's hotel, I do not recall.

Bowman stated to Colter (last week) that he presumed the papers were still in his grip, but indicated the hope that Colter would not advise Christensen, as he did not wish Christensen to go through his suit case.

Take this matter up with Mr. Christensen, and endeavor to ascertain just what became of these papers. Put Spaulding and Shartell through the third degree, and give Bowman the same dose—only a little more. You can put it up to Bowman flat that he is responsible for the papers. When you find out who abstracted the papers, and who has them, or find who surreptitiously returned the envelope containing only a part of them, submit a complete report to this office, and proper action will be taken

for criminal prosecution against the parties involved, unless in your opinion they should not be proceeded against. It is especially desirable that you find these papers before the conclusion of the Cunningham trial, for they may contain that which will aid the Government in canceling the entries. It would be entirely in keeping with other recent attitude for Mr. Glavis or some of his particular Forest-Service friends to hold out any material matter, in the hopes that the Government will be unable to succeed, and thereby give them an opportunity to further publicly damn the General Land Office.

Respectfully,

H. H. SCHWARTZ,
Chief of Field Service.

Senator PURCELL. What is the date of that?

Mr. CHRISTENSEN. October 23, 1909.

The CHAIRMAN. It is admitted.

Senator PURCELL. Who was in charge of the land office at the time this envelope was laid on Mr. Sheridan's desk?

Mr. CHRISTENSEN. That envelope, as I stated in my letter to Schwartz, I laid it on the desk, or called Mr. Sheridan's attention to it immediately after he arrived from Washington, and told him to take any papers—

Senator PURCELL. You were in charge of the office at the time this yellow envelope he speaks of was laid on his desk—that is, Sheridan's desk?

Mr. CHRISTENSEN. Yes, sir.

Senator PURCELL. About what date was that?

Mr. CHRISTENSEN. It had been lying on his desk in the wicker basket all the time. You see after Sheridan arrived from Washington I returned to Portland where I had a force of 30 or 35 agents and remained there for a week or more, and it was not until one of my subsequent trips that Sheridan called this to my attention, or that he wrote this letter.

Senator PURCELL. What I was getting at is, about what date was it Sheridan first knew this envelope was laid on his desk?

Mr. CHRISTENSEN. That was October the 18th.

Senator PURCELL. October the 18th?

Mr. CHRISTENSEN. Yes; that was the date that he wrote the letter. I do not know when he found it; Mr. Sheridan will explain that.

Mr. MADISON. Schwartz wrote you to administer the third degree.

Mr. CHRISTENSEN. No, sir; he wrote Mr. Sheridan.

Mr. MADISON. He wrote Sheridan?

Mr. CHRISTENSEN. Yes, sir.

Mr. MADISON. You do not know whether the third degree was administered to those people or not, do you?

Mr. CHRISTENSEN. Well, it was pretty thoroughly investigated. After that Mr. Sheridan took it up.

Mr. MADISON. What is meant there by the third degree? You are a member of the Land Office force. What do you understand by that?

Mr. CHRISTENSEN. The usual term of third degree that you hear, I suppose. I am not able to state what was meant.

Mr. GRAHAM. Have you taken it or given it?

Mr. CHRISTENSEN. Yes, sir; I got part of it.

Senator PURCELL. At the time that letter was written there was somebody else under suspicion of having taken the letters besides Glavis, was there not?

Mr. CHRISTENSEN. Yes, sir; of course we did not know who they were.

Mr. VERTREES. Mr. Chairman, I wish the letter just read to go in evidence.

The CHAIRMAN. It is admitted.

Mr. VERTREES. What next was done?

Mr. CHRISTENSEN. On October the 19th a large number of papers, original papers, belonging to the Seattle division, were returned to the office and given to Mr. Sheridan during my absence by Mr. Shaw and Pierce of the Forestry Service, and the details of this I am only able to relate so far as Mr. Sheridan told me—that they were delivered to him by Mr. Shaw and Mr. Pierce; they explained it to him.

The CHAIRMAN. What are those papers? Can you give us an outline of them?

Mr. CHRISTENSEN. There are three here that relate to the Cunningham coal cases. I will read one paragraph—

The CHAIRMAN. Do not read them unless the attorneys want them read or members of the committee. Just state the outline of them.

Mr. CHRISTENSEN. They related generally to the files of the division, the files of the office. There are three that relate particularly to the Cunningham cases.

The CHAIRMAN. Is there any objection to these files going into the records without being read? If not, they are admitted.

(The papers referred to are as follows:)

Memorandum.

SEATTLE, WASHINGTON, October 21, 1909.

The following papers were delivered to me at my office in room 219, Federal Building, Seattle, Washington, by Mr. A. C. Shaw, of the Forest Service, on the morning of October 19, 1909, and they are the same referred to in my memorandum, dated Seattle, Wash., October 19, 1909, wherein mention is made of their receipt in a large blank manila envelope:

CUNNINGHAM COAL CASE PAPERS.

1. Letter of instructions to Mr. Gabriel Wingate, care the United States Forest Service, Seattle, Wash., written by Mr. L. R. Glavis, and also signed by Mr. Allen, the district forester at Portland, Oregon, which latter bears date Portland, Oregon, July 31, 1909. This letter, Mr. Pierce informs me, was a collaboration of Messrs. Glavis and Allen. These instructions were given Mr. Wingate for his guidance in examining the Cunningham group of coal claims in Alaska. (Three typewritten pages.)

2. Statement of accounts for the Alaska coal fields for the fiscal year ending February 1, 1904, together with a summary of inventory taken at that date by Clarence Cunningham. This statement bears date Katalla, Alaska, Feb. 29, 1904. (Eight typewritten pages, legal size.) Checked and compared by Stoner, Mch. 14, 1908, at Portland." (O. K., J. M. S.)

3. Circular by Clarence Cunningham, addressed to "Dear Sir," dated Seattle, Washington, October 20, 1905, which begins "Since our meeting held in Spokane, June 20th, at which time it was decided to send an expert to examine our coal fields in Alaska, a committee was appointed, constituted of Messrs. Miles C. Moore, H. C. Henry, C. J. Smith, and Frederick Burbridge, to select a suitable man, and Mr. H. L. Hawkins was decided upon to make the examination, I have to report as follows." This circular consists of seven typewritten pages, legal size, with blue back, and goes into every detail of the examination made by Mr. Hawkins and the result thereof, and winds up by setting out receipts and disbursements and a trial balance, etc. It bears a manuscript memorandum which reads as follows:

"Checked and compared by us from the original paper now in the possession of F. F. Johnson, of Wallace, Idaho, this 4th day of March, 1908, Horace T. Jones, agent. L. R. Glavis, chief field division."

OTHER LETTERS AND PAPERS.

4. Manila envelope, with following brief: "Vancouver 389, Portland Coal & Coke Co., Oregon Railway & Navigation Co., Mohler, Geo. J., et ux., Lytle, E. E., et ux., et al., involving six patented coal claims and thirteen coal declaratory statements, 12 and 13 N. R. 5 and 6 E." No inclosures in this jacket.

5. Manila envelope bearing following brief: "Vancouver No. 602, Wells, Harley H., on behalf of heirs of Geo. A. Wells, deceased, Morton, Washington. C. D. S. 0118, July 10, 1906, application to purchase, for February 8, 1909. Lots 7-8-9-SE. 1 SW 1/4, section 6, T. 12 N., R. 5 E., February 18, 1909. Proof notice indorsed protest." This jacket contains no inclosures.

6. Letter from R. & R. at Vancouver land office to Glavis, dated Vancouver, Wash., May 21, 1909, in re coal declaratory statement No. 618, by Robert W. Lewis and George A. Wells. (One typewritten page.)

7. Five typewritten pages (legal size) of interrogatories unanswered, bearing no date nor name of case, but apparently relating to case at the headwaters of the St. Joe River and Little North Fork of the Clear Water in Idaho. (See question 5.)

8. Letter from chief field division (evidently Glavis), to clerk United States circuit court, Tacoma, Wash., dated Portland, Oregon, November 28, 1908, in re stipulations by Wallace McCammant. (One typewritten page.)

9. Letter from Fred G. Dorety, asst. U. S. attorney, to L. R. Glavis, dated from the office of the United States district attorney for the west district of Washington, Seattle, Wash., April 11, 1908, in re Portland coal & coke cases. (One typewritten page.)

10. Motion for continuance in the case of A. L. Mohler, coal claimant, v. James S. Neill, timber claimant, in the U. S. land office at Vancouver, Washington. The motion being for a continuance for the purpose of securing testimony. (Three typewritten pages, legal size.)

11. Letter from Elmer E. Todd, U. S. district attorney, Seattle, Wash., to L. R. Glavis, dated November 6, 1908, in re decision of Judge Hanford on Portland Coal & Coke Co. cases. (One typewritten page.) Attached to above are five blank relinquishment blanks, evidently prepared by Mr. Glavis, but not signed by anybody.

12. Letter from Frederick G. Dorety, asst. U. S. attorney, to Glavis, dated Seattle Wash., February 14, 1908, in re Portland Coal & Coke cases. (One typewritten page.)

13. Letter from Glavis, apparently to A. L. Mohler, dated Oakland, California, August 10, 1907, in re Portland Coal & Coke cases. (Two typewritten pages.)

14. Letter from W. A. Richards, Commissioner General Land Office, September 11, 1906, in re coal declaratory statement of Andrew J. Hoban and J. W. Taggart. (One typewritten page.)

15. Typewritten copy of telegram from Mr. Ballinger, Commissioner G. L. O., to Glavis, dated Washington, D. C., June 3, 1907, advising Hoyt has legal end of coal cases, though Glavis will continue control of investigation of facts, leaving Parrott in charge, and directing Glavis to proceed north when deemed advisable. (On small slip of paper.)

16. Letter from Glavis to R. & R., Vancouver, Wash., dated Vancouver, Wash., December 7, 1906, requesting copy of testimony offered at hearing of coal-land cases in T. 12 N., R. 5 E. (One typewritten page.)

17. Letter from Glavis to R. & R., Vancouver, Wash., dated Vancouver, Wash., December 10, 1906, receipting for eleven coal declaratory statements and requesting that they be placed in safe for future use. (One typewritten page.)

18. Letter from Glavis to R. & R., Vancouver, Wash., dated Vancouver, Wash., December 29, 1906, in re coal declaratory statements Nos. 619, 620, and 621, by the Morton Association, Anthracite Association, and Cowlitz Association. (One typewritten page.)

19. Typewritten copy of telegram from Glavis to Commissioner G. L. O., dated March 20, 1907 (place not given), in re efforts to dispose of patented lands involved in coal report of January 4th and recommending suit be immediately instituted (On about half page of letter size paper.)

20. Letter from Glavis to Commissioner G. L. O., dated Seattle, Wash., March 30, 1907, transmitting copy of affidavit of W. C. Dietz in re Portland coal & coke cases. (Two typewritten pages.)

21. Letter from Glavis to Frederick G. Dorety, asst. U. S. attorney, Seattle, Wash., dated Portland, Oregon, February 20, 1908, acknowledging receipt of Dorety's letter of 14th inst. in re Portland coal & coke cases. (One typewritten page.)

22. Letter from Glavis to Honorable Henry M. Hoyt, asst. U. S. attorney, Seattle, Wash., dated Oakland, California, July 20, 1907, inclosing copy of interview with A. L. Mohler. (One typewritten page.)

23. Original memorandum, presumably handwriting of Glavis, on paper of "The Millard Hotel," Omaha, Neb., setting out result of interview had with A. L. Mohler

t 4 p. m. July 15, 1907. This memo. consists of three sheets of papers written in indelible pencil on both sides of paper. It is not signed by anybody, nor is the place given. Attached to this memo. is a typewritten copy of same, consisting of two typewritten pages—legal size.

24. Manuscript memo. of Portland Coal & Coke Co. cases, consisting of four pages of memos. and interrogatories—not signed or dated. The interrogatories are twenty-three in number and were questions to be propounded to A. L. Mohler.

25. Letter from Henry M. Hoyt, asst. U. S. attorney, Seattle, Wash., to Glavis, dated September 2, 1907, in re Portland Coal & Coke Co. cases. (Three typewritten pages.)

26. Letter from Henry M. Hoyt, asst. U. S. attorney, to Glavis, dated Seattle, Wash., July 24, 1907, in re interview of Glavis with A. L. Mohler in Omaha, Nebr. (One typewritten page.)

27. Letter from Henry M. Hoyt, asst. U. S. attorney, to Glavis, dated Seattle, Wash., Nov. 11, 1907, in re Mr. Hoyt's visit to Portland, Oregon. (One typewritten page.)

28. Letter from Frederick V. Holman to Glavis, dated Portland, Oregon, July 5, 1907, in re relinquishment of coal declaratory statement No. 620. (One typewritten page.)

29. Notice of sale of 85,000 ft. b. m. of timber, cut by the firms of Scow Bros., Lovell Irrigation Co., in Carbon Co., Montana, signed by Louis L. Sharp, special agent, G. L. O., and dated Helena, Mont., December 10, 1906. (One typewritten page.)

30. Letter from Glavis, presumably to Henry M. Hoyt, asst. U. S. attorney, Seattle, Wash., dated Oakland, Cal., August 10, 1907, enclosing copy of letter to A. L. Mohler, asking for voluntary statement of his connection with the Portland Coal & Coke Co. Two typewritten pages.)

31. Letter from A. L. Mohler to Glavis, dated Omaha, Nebr., Aug. 17, 1907, advising Glavis that no list of questions had been received to which he was to make answer. (One typewritten sheet on Union Pacific R. R. Co. letter-head.)

32. Letter from Glavis, apparently to Henry M. Hoyt, asst. U. S. attorney, dated Oakland, Cal., Aug. 22, 1907, advising Mr. Hoyt of his receipt of letter from Mohler asking for list of questions which he is to answer. (One typewritten page.)

33. Letter from Glavis, apparently to Mohler, dated Oakland, Cal., Aug. 22, 1907, advising Mohler that he wishes statement as suggested in letter of 10th inst. (One typewritten page.)

34. Letter from McEniry to Glavis, dated Denver, Colorado, February 23, 1909, enclosing papers found in the Denver files relating to land frauds in State of Washington. (1 typewritten page.)

35. Letter from R. & R., Vancouver, Wash., to Dixon, Chief of Field Division, Spokane, Wash., dated Vancouver, Wash., December 4, 1908, in re C. D. S. No. 659 of William Ladd, of Portland, Oregon. (One typewritten page.)

To this is attached manila envelope bearing brief "Vancouver No. 512, Ladd, William M., Portland, Oregon, C. D. S. 659, Nov. 25, 1907," etc. No inclosures in packet.

36. Letter from deputy clerk U. S. circuit court, west district Washington, Tacoma, Wash., to Glavis, in re letter from Glavis dated 28th ult. enclosing stipulations signed by Wallace McCamant in the Lytle case. Deputy clerk's letter bears date December 1, 1908. (One typewritten page.)

37. Letter from Glavis, apparently to Elmer E. Todd, U. S. attorney, Seattle, Wash., dated Portland, Oregon, November 28, 1908, transmitting copy of letter to clerk U. S. circuit court, Tacoma, Wash. (One typewritten page.)

38. Letter from Commissioner Dennett, G. L. O., to Glavis, dated Washington, D. C., June 11, 1909, in re coal land entries Nos. 25 to 30, inclusive, Vancouver, Wash., land district. (Two typewritten pages.)

39. Cancelled check signed by J. Frank Watson, for \$4,000, payable to order of A. J. Cook, dated Portland, Ore., August 19, 1902; on check of Merchants Nat'l Bank, Portland, Oregon. This is merely a copy of original check on a cancelled check blank. Accompanying this check are three deposit slips, two by A. J. Cook, dated August 21st and 23rd, 1902, respectively, and one by L. B. Clough, dated June 11, 1902.

The following papers are also attached to the above named check:

One manuscript page of memoranda, apparently in handwriting of Glavis.

Letter from Commissioner G. L. O., not bearing signature, to Secretary of Interior, in re conspiracy to defraud United States of five thousand acres land in Lewis County, Washington. (Five typewritten pages.)

Letter from Portland Coal & Coke Co., by Chas. Wanzer, president, and J. M. Long, secretary, to J. Frank Watson, dated Portland, Oregon, August 10, 1905, in re annual

meeting of stockholders of Portland Coal and Coke Co., held July 18, 1905. (Four typewritten pages, legal size.)

Letter from Glavis to Commissioner G. L. O., dated Portland, Oregon, November 1, 1908, in re Portland Coal & Coke cases.

40. Copy of check of Merchants Nat'l Bank of Portland, Ore., dated Portland, Ore., July 22, 1902, for \$12,000.00, payable to E. E. Lytle, signed by J. Frank Watson. Drawn on a cancelled check form.

41. Letter from Edward W. Dixon, chief field division, to Glavis, dated Spokane, Wash., May 29, 1909, enclosing letter P of January 25, 1909, requesting return of certain records. (One typewritten page.)

42. Letter from Commissioner Dennett to Dixon, chief field division, dated January 25, 1909, requesting return of papers filed in court files Nos. 1280 to 1285, inclusive. (One typewritten page.)

43. Letter from Wallace McCamant to Glavis, dated Portland, Oregon, November 28, 1908, enclosing stipulations in six suits brought by United States against Portland Coal & Coke Co. (One typewritten page.)

44. Answer of E. E. Lytle and Lizzie M. Lytle in case of United States vs. Portland Coal & Coke Co. (Six typewritten pages, legal size.)

45. Memo. in pencil, in handwriting of Glavis, apparently addressed to D. K. Parrott, directing that he procure full statement from Charles E. Ladd in re his coal declaratory statement, in Lewis Co., Washington, also information in re Portland Coal & Coke Co., its stock property, and connection with the Oregon Railway & Navigation Co.

46. Mutilated form containing nine questions relating to land claimants, signed by L. R. Glavis, and bearing the following manuscript note: "I know nothing of above claim. A. W. Gale, P. M."

(Signed) JAMES M. SHERIDAN.

Mr. VERTREES. Those 3 relating to the Cunningham case were none of those 24, were they?

Mr. CHRISTENSEN. No, sir. Then we proceeded with the investigation. Mr. Sheridan and Mr. Pugh, who were there, were both interviewing the people who might know something about them, and also I was helping them out, and on November 12, 1909, I wrote Mr. Schwartz as follows:

PORTLAND, OREGON, November 4, 1909.

Hon. H. H. SCHWARTZ,
Chief of Field Service, Washington, D. C.

SIR: Referring further to your telegram of October 8, 1909, to Special Agent Sheridan, in which you suggested that if he saw Bowman he question him concerning the Cunningham letters, and other telegrams and correspondence between yourself, Mr. Colter, Mr. Sheridan, and myself, and especially to the letter from Mr. Sheridan of October 18, 1909, and to your letter of October 23, 1909, to Mr. Sheridan, in which you make certain suggestions with a view to ascertaining what became of the letters in question, I have the honor to advise you that the first knowledge I had of these missing letters was when it was called to my attention by Special Agent Robert F. Maguire, whom I called to Seattle to assist me in taking over the records from Mr. Glavis. You will also recall that I called this to your attention when you were in Seattle, which fact I have already mentioned in my letter to you of October 19, 1909.

It appears that this large envelope containing these letters from the Juneau, Alaska, land office was taken from Bowman's grip by Mr. Glavis and given to Miss Schwinnen, whom I employed temporarily to assist in making record of the cases. All that Miss Schwinnen did with these letters was to make a copy of the memorandum of the letters which was in the envelope and which are marked as pages 125 and 126 of my receipt to Glavis for the records of the office. As soon as the memorandum had been copied by Miss Schwinnen I handed it and the envelope to Mr. Maguire to check them up and see whether or not all of the letters mentioned in the said memorandum were there. As will be seen from my letter to Mr. Glavis, dated September 20, 1909 (page 124 of the receipt), there were 24 letters and telegrams missing. The telegram from Clarence Cunningham of January 15, 1908, was subsequently located. Mr. Maguire will make affidavit to the effect that the letters mentioned in my letter to Mr. Glavis of September 20th were missing from the envelope when he checked them with the memorandum enclosed therewith, which affidavit I will secure and forward to you.

As I informed you and also as Mr. Sheridan has stated to you in his letter of October 18, 1909, Mr. Glavis replied to the letter orally, stating that he supposed that the

papers were somewhere about the office, and that he did not have them in his possession.

Miss Shartell, in her letter of October 29, 1909, addressed to Mr. Sheridan, a copy of which is hereto attached, states that she had no knowledge of the original letters, said to have been brought by Mr. Bowman from the land office at Juneau, until the matter was called to her attention a short time ago.

It is certain that these letters were received from the land office by Mr. Bowman. It is certain that they are not in the office at Seattle, Washington. There is no doubt whatever but that they were not in the envelope on the date that they were checked up by Mr. Maguire. Therefore, either Mr. Bowman or Mr. Glavis is responsible for their disappearance. Mr. Bowman states that he has not any of the Cunningham letters in his possession, that he never gave any to Mr. Glavis, and that the last he saw of them was when they were left in his grip in the office in Seattle. He also states that he wrote Mr. Glavis that these letters had been left there in his grip.

This would seem to eliminate all other parties who might have handled these letters, except Glavis. He is the one responsible and he is the one that should be looked to for them. If he is purposely and willfully concealing them, he is guilty of the embezzlement of government property and should be immediately proceeded against under the act of March 3, 1875 (18 Stat., 479). In view of what I have since learned concerning the acts of Mr. Glavis relative to forwarding to the Forester at Washington, D. C., of papers which were material to the successful prosecution of the cases pending in the Alaska division, and especially those papers relating to the Cunningham cases which are mentioned in Mr. Sheridan's letter of October 23, 1909, to A. C. Shaw, of the Forest Service, and those mentioned in Shaw's reply to Mr. Sheridan of October 25, 1909, there would seem to be little doubt but that the missing papers are now in possession of Mr. Glavis or are concealed somewhere by him. The memorandum attached to Mr. Sheridan's letter to Mr. Shaw on October 23, 1909, shows that Glavis had papers in his possession not only relating to the Alaska coal cases, but also relating to a number of cases pending in the western district of Washington, and also concerning other miscellaneous matters which were properly files belonging to the General Land Office, and were unlawfully taken from the office at Seattle.

You will recall upon your visit to Seattle that I told you that I was about to procure a search warrant in order to search the room of Mr. Glavis with a view to ascertaining just what government property he had retained, but that I had, in view of the possible unpleasant notoriety in connection therewith, refrained from doing so. You also stated that you thought it would not be advisable, for the reason that Mr. Glavis would no doubt immediately go to the newspapers and make it appear that the General Land Office was afraid that he had in his possession something which could not be safely published.

You will also recall that I told you that it was necessary to threaten Mr. Glavis both civilly and criminally before he turned over to me certain important files of the office.

Mr. Stoner informs me that on his trip East, Mr. Glavis had a large number of papers belonging to the files of the Seattle office with him, and that while we were engaged in sifting over the records of the office, he accompanied Mr. Glavis to his room on September 16 and 18, where they were engaged in separating the office records from Glavis's personal affairs.

In this connection, I desire to invite your attention to the telegram from Mr. Glavis, dated, I believe, September 17, 1909, in which he advised your office that the Hunt and other papers were not on file in the office, and charged that Special Agent Sheridan had taken them without the permission of the clerk. It was found, however, that these papers were at all times in his possession in his room at the Lincoln Hotel and were not brought to the office until late Saturday, September 18, 1909.

I attach herewith a copy of Mr. Stoner's letter to me of November 1, 1909. Mr. Stoner's reasons to me concerning the object of his accompanying Mr. Glavis to the room have never been satisfactorily explained. It seems to me that he should be able to state more plainly just what his duties were there and what papers, if any, were retained by Glavis. I questioned him concerning this matter when you were in Seattle and again on November 1, before Mr. Sheridan, but nothing satisfactory can be divulged from him.

I am of the opinion that unless the missing papers as set forth in my letter to Mr. Glavis of September 20, 1909, and in Mr. Sheridan's letter to you of October 18, 1909, can be accounted for by Mr. Bowman or Mr. Glavis, that criminal proceedings should be immediately instituted against Mr. Glavis under the act of March 3, 1875 (18 Stat., 479).

I am sending a copy of this letter to Mr. Sheridan.

Very respectfully,

Chief of Field Division.

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There are attached two exhibits here in the letter, one from Miss Shartell and one from Mr. Stoner. Shall I read them?

Senator PURCELL. Yes.

Mr. CHRISTENSEN. They are as follows:

SEATTLE, WASHINGTON, October 29, 1909.

Mr. J. M. SHERIDAN,
Special Agent, G. L. O., Seattle, Wash.

SIR: In reply to your inquiry as to my knowledge of the papers in the Alaska cases, I have the honor to advise as follows:

Along about the middle of August, 1909, Arthur R. Bowman, special agent, G. L. O., returned from Alaska and brought with him a list of names of claimants, principally in the McAlpine group, who had filed on claims subsequent to the time the first list was received. These were copied by me and arranged by towns, etc., so as to expedite the investigation. Most of these claimants were in Detroit, although a few were scattered around in different towns in the East. Shortly after Mr. Bowman left for the East for the purpose of interviewing these claimants, he wrote requesting a copy of the commissioner's decision in some matter, which he had left in a suit case in the office. I remember distinctly that the decision called for was on top of all the other matter in the suit case, so paid no attention to anything else which might have been with it.

Later, on September 15, 1909, Mr. Glavis dictated a letter to me for Mr. Bowman at Detroit, and forwarded him, per his request, a copy of the affidavit of Albert Roehn, one of the claimants in the McAlpine group, to aid him in his investigation; also, in another letter of the same date, he sent a copy of the affidavit of John W. Hartline, the agent for the Hartline group, in order that Mr. Bowman could see what facts Mr. Hartline had sworn to. No original papers were sent and no other papers of which I have any knowledge. I had no knowledge whatever of the bunch of original letters said to have been brought by Mr. Bowman from the land office at Juneau, Alaska, until called to my attention a week or so ago.

The only other papers sent from this office is any of these cases, of which I have any knowledge, are the papers sent to Mr. S. J. Colter, chief of field division, Duluth, Minnesota, on October 16, 1909; also a few additional letters and telegrams sent October 19, 1909, copies of the lists of which are on file in this office.

Respectfully,

(Signed) ELLA M. SHARTELL,
Stenographer in Office of Seventeenth Field Division.

SEATTLE, WASH., November 1, 1909.

Mr. A. CHRISTENSEN,
Chief of Field Division, Seattle, Wash.

SIR: Referring to your verbal request of this date that I write you a letter in relation to my visits with Mr. L. R. Glavis, former chief of this division, to his rooms at the Lincoln Hotel, this city, on Sept. 16th and Sept. 18, 1909—

I have to say that on Sept. 16 I accompanied Mr. Glavis, at his request, to his rooms at the Lincoln Hotel and remained there about one hour. While there, Mr. Glavis was engaged in segregating various official papers from his private papers; some of the official papers he handed over to me to look at; others he merely put in a pile and afterward they were all tied in bundles and brought by us to this office and turned over to you.

On Sept. 18 I again accompanied Mr. Glavis, at his request, to his rooms at the Lincoln and remained there about two hours; as on the former visit, Mr. Glavis segregated some other official papers from his private papers and again handed me various papers to look at; on this occasion, as on the previous one, all the official papers seen by me were tied in bundles and brought by us to this office.

I am unable to recall the exact nature of all the papers seen by me. I do recall, however, that, as far as I know, all the affidavits and other papers relating to the investigation of the Green, Hunt, and Feed groups of coal claims were among the papers and it was with these papers that I had most to do, looking them over and putting them in order.

There were other papers relating to Oregon matters the nature of which I am unable to state, except, as I recall it now, Mr. Glavis said they referred to T. B. Neuhauser's accounts and the Long case.

I only saw one paper in any way relating to the Cunningham coal cases; that was a letter written by Clarence Cunningham to the register of the land office at Juneau, Alaska.

All of the official papers seen by me in Mr. Glavis's rooms, on both my visits there, were brought by us from there to this office, and if he has retained any official papers in his possession they were not among those seen by me.

I do not know what object Mr. Glavis had in requesting me to visit his rooms except to assist him in conveying the bundles of papers to this office.

Very respectfully,

S. N. STONER,
Special Agent, G. L. O.

The CHAIRMAN. They are admitted in evidence. It is now quarter to 1 o'clock, and the committee will take a recess until 2 o'clock.

(Accordingly, at 12 o'clock and 45 minutes p. m., the committee took a recess until 2 o'clock p. m.)

AFTER RECESS.

(The committee reassembled at 2 o'clock p. m.)

The CHAIRMAN. The committee will please come to order. Mr. Vertrees, you may proceed.

Mr. VERTREES. What date had we reached at the adjournment, Mr. Christensen?

Mr. CHRISTENSEN. I believe the last letter I read was dated November 4, to Mr. Schwartz, which was accompanied by two exhibits.

Mr. VERTREES. Before proceeding with that correspondence, state to the committee whether or not, in response to requests and demands of yours, various documents belonging to the office were at any time transmitted by the Forest Bureau; if so, give the dates and lists of the papers.

Mr. CHRISTENSEN. I was coming to that.

Mr. VERTREES. You were coming to that?

Mr. CHRISTENSEN. Yes, sir.

Mr. VERTREES. Very well, then; proceed in your own way.

Mr. CHRISTENSEN. On November 5, 1909, I had been looking for Mr. Glavis in connection with making a demand on him for a copy of his report to the President, which I learned he had not left in the office, and when I ran across him in Portland he handed to me a large number of official records, and with it was this letter.

The CHAIRMAN. What date was that?

Mr. CHRISTENSEN. November 5, 1909 [reading]:

PORTLAND, ORE., Nov. 5, 1909.

Mr. ANDREW CHRISTENSEN,
Chief of Field Division, Portland, Oregon.

DEAR SIR: In looking through my personal letter files I discovered some letters and copies of letters that might be considered semiofficial, and I therefore deliver them to you.

Respectfully,

L. R. GLAVIS.

Mr. VERTREES. Now, describe those papers which he then delivered, and which he designated as possibly "semiofficial."

Mr. CHRISTENSEN. It would be rather difficult to describe them. I have a list of them here. There were a very large number of them.

The CHAIRMAN. Have you copies of them, too?

Mr. VERTREES. This is a list of them, too.

The CHAIRMAN. But have you copies of them?

Mr. VERTREES. I do not know. [To Mr. Christensen:] Have you copies of those?

Mr. CHRISTENSEN. Copies of those papers?

The CHAIRMAN. All of them.

Mr. CHRISTENSEN. That is a list of all the property returned to me on that day. It sets forth quite fully the contents of each document.

Mr. VERTREES. State, in a general way, the nature of some of those documents, whether they were reports of investigations, or what they were.

Mr. CHRISTENSEN. They were copies of correspondence, and also original letters between Mr. Glavis and the Land Office; between Mr. Glavis and others; and also some original affidavits, and copies of affidavits, referring to matters pending in the Seattle division; also in the Portland, Oreg., division while he was chief of division there.

Senator SUTHERLAND. Those were official papers, were they?

Mr. CHRISTENSEN. Those were official papers, most of them. There were some of them which he might term "semiofficial."

The CHAIRMAN. How many of the papers are there?

Mr. CHRISTENSEN. I don't know. I have never counted them.

Mr. VERTREES. We will just put the list in, Mr. Chairman.

The CHAIRMAN. The list is admitted.

(The list is as follows:)

MEMORANDUM.

The following is a list of papers given to Andrew Christensen, Chief of Field Division, by Louis R. Glavis in the office of the district forester, Portland, Oreg., on November 5, 1909:

[Copy of note accompanying the papers.]

[The Portland, Portland, Oreg. H. C. Bowers, manager.]

PORTLAND, ORE., Nov. 5, 1909.

Mr. ANDREW CHRISTENSEN,
Chief of Field Division, Portland, Oregon.

DEAR SIR: In looking through my personal letter files I discovered some letters and copies of letters that might be considered semiofficial, and I therefore deliver them to you.

Respectfully,

L. R. GLAVIS.

List of the papers.

Notebook of Louis R. Glavis, spl. agt., Portland, Ore., containing quarter-section diagrams and a few pencil memoranda.

H. R. Doc. 1201 (60th Cong., 2d session), being letter of 11-25-08 from Secty. of the Interior to the Speaker of the House re railroads in Alaska. (Annotated in pen / G. L. O. pamphlet of 4-12-07, "Coal land laws and regulations thereunder," Part I, in general; Part II, in Alaska.

Scrappy and unintelligible memoranda on Postal Telegraph blank.

"Statement of articles purchased by Mr. Glavis," office supplies itemized, totaling \$9.

Memoranda (a page 2) re certain cases in "Young group" in which files missing

Oct. 6, 1905. Copy of letter, Spl. Agt. H. K. Love, Juneau, Alaska, to Commr. G. L. O. reporting re work on Bering Lake coal belt, outlining methods of filing, and asking instructions.

1906.

Feb. 5, 1906. Orig. letter, Fred Dennett, Chief Field Div. No. 1, Seattle, to L. R. G. Vancouver, Wash., requesting advertisements for bids on 75 cords bolts in E. S. Person case.

———. Jacket envelope with heading "U. S. Court cases in Arkansas," and bearing notation: "Subpoenaed to be in Fort Smith, Ark., Jan. 15, 1907."

June 6, 1906. Orig. wire, Asst. Commr. Pollock to Glavis, Vancouver, Wash., stating subpoena issued for latter's attendance at Ft. Smith, Ark., June 13.

June 7. Copy wire, Acting Commr. Pollock to Dennett, Seattle, to advise Glavis proceed to Ft. Smith, Ark., by June 13.

June 8. Orig. wire, Dennett to Glavis advising him as per wire from G. L. O.

June 9. Orig. letter Dennett to Glavis quoting wire about attendance at Ft. Smith, etc.

June 16. Orig. wire, U. S. Atty. James K. Barnes, Ft. Smith, to Glavis—need not come, cases continued.

July 23. Carbon letter, L. R. G. (?), Vancouver, Wash., to James K. Barnes asking when attendance will be required, etc.

Aug. 10. Orig. letter, Asst. U. S. Atty. L. W. Gregg, Ft. Smith, Ark., to L. R. G., Vancouver, Wash., replying to July 23, and stating L. R. G. will be wanted 1-15-07 as witnesses in cases against seven defendants.

Aug. 20. Carbon letter, L. R. G., Vancouver, Wash., to Ch. Fld. Div. S. W. Williams, Little Rock, Ark., requesting papers in cases at Ft. Smith.

Aug. 20. Carbon letter, L. R. G., Vancouver, Wash., to Commr. G. L. O., advising of necessity of attendance at Ft. Smith, 1-15-07.

Sept. 7. Orig. letter, C. F. D. S. W. Williams, from New Orleans, La., to L. R. G., Vancouver, Wash., advising papers desired are in possession of Spl. Agent J. A. Tellier, at Little Rock.

Sept. 14. Carbon letter, L. R. G., Vancouver, Wash., to C. F. D. S. W. Williams at New Orleans requesting papers be sent him care U. S. Atty. at Ft. Smith by 1-10-07.

Papers re Morton coal Fields, 1906 and 1907.

April 26, 1906. Orig. letter E. E. Lytle, Pres. O. R. & N. Co., to James J. O'Keene, Atty., Vancouver, Wash., re timber lands in Lewis County, Wash.

Dec. 14, 1906. Affidavit of G. Wingate before L. R. G. at Astoria, re inspection about September, 1903, and report for A. L. Mohler, V. P. & G. M., O. R. & N. Co., on Morton coal fields, Lewis Co., Wash., etc.

Dec. 26, 1906. Affidavit of Frank L. Huston before L. R. G., at Vancouver, Wash., re deals in connection with Morton coal fields.

Dec. 26, 1906. Affidavit of Jas. J. O'Keene before L. R. G., at Vancouver, Wash., re plats of Lewis County lands, interview with E. E. Lytle, etc.

March 7, 1909. Affidavit of W. C. Dietz before L. R. G., at Portland, re his financial matters and certain events that transpired while he was cook and watchman at Morton coal fields—April, 1901, to Oct., 1903.

1907.

Jan. 19, 1907. Carbon letter, L. R. G., from Ft. Smith, Ark., to Commr. G. L. O., summarizing results in many criminal and civil cases enumerated.

Feb. 8, 1907. Orig. letter, Fred Dennett C. F. D. No. 1, Seattle, to L. R. G., Vancouver, Wash., as to interpretation of Executive Order of 1-25-07—two copies attached.

Mar. 30. Verbatim report of interview with Watson Allen in New York Block, Seattle, by Spl. Asst. U. S. Atty. Henry M. Hoyt at U. S. Atty's office.

Apr. 16. Orig. letter C. F. D. M. D. McEniry, Denver, Colo., to L. R. G., C. F. D. Oakland, Cal., re Leroy O. Moore's qualifications as special agent.

July 26. Orig. letter Acting Commr. Dennett, to D. K. Parrott, Acting C. F. D., Oakland, Cal., re endorsement as to release from suspension, etc.

Aug. 6. Orig. letter, Commr. R. A. Ballinger from Seattle, to L. R. G., C. F. D., Oakland, Cal., stating can not visit California during summer—for L. R. G. to try help out local land offices.

Oct. 14. Orig. letter, Acting Commr. Dennett, to L. R. G., C. F. D., Portland, asking re Spl. Agent Fellows' connection with Imperial Valley land frauds.

Nov. 14. Carbon letter L. R. G. (?), Portland, to H. H. S. re conditions in office, need of more agents, etc.

Nov. 22. Orig. letter H. H. S. to L. R. G. in reply—will send Pollard, etc.

Dec. 20. Carbon 13-page letter H. H. S. to Commr.—transmitted to Glavis with personal memo. from H. H. S. to effect that Commr. has refused to take action against Spl. Agt. Meyendorff. Letter relates to charges in detail, and is accompanied by carbon of letter W. A. Richards, Acting Commr., to Secty. of Interior 12-30-99 on same subject.

1908.

January 14, 1908. Orig. personal letter H. H. S. to L. R. G. at Oakland, Cal., re Meyendorff, etc.

Jan. 15, 1908. Orig. letter H. H. S. to L. R. G., Portland, enclosing copy Commr.'s wire of 1-2-08 to L. R. G.,—both re assisting Heney in pending cases.

2712 INVESTIGATION INTERIOR DEPT. AND BUREAU OF FORESTRY.

Jan. 30. Copy letter Acting C. F. D., Oakland, Cal., to Oscar Lawler, U. S. Dist. Atty., Los Angeles, Cal., re Lillis's unlawful enclosure case—also copy letter 1-20 Acting Commr. Dennett to C. F. D., B. W. Marshall, Oakland; copy letter 11-18-07 Lawler to Marshall; and copy letter 11-13-07 C. F. D., Oakland, to Commr. G. L. O. (This bunch of copies of correspondence on the same subject attached together.)

Feb. 5. Copy letter Acting C. F. D., Oakland to Commr. G. L. O. re W. W. and G. B. Williams's unlawful enclosure—also copy letter 12-18-07 U. S. Atty. Samuel Platt, Carson City, Nev., to B. W. Marshall, C. F. D., Oakland; copy letter 12-18-07 C. F. D., Oakland to Commr. G. L. O.; and copy letter 12-13-07 C. F. D., Oakland to Commr. G. L. O. (This bunch of copies of correspondence on same subject attached together.)

Feb. 27. Carbon letter L. R. G. (?) from Portland to H. H. S. re Cunningham and cases, contemplated trip to Alaska of L. R. G., etc.

Mar. 29. Copy (with a carbon) of report Spl. Agent H. T. Jones from Portland to Commr. G. L. O., re Attorney A. W. Lafferty in connection with Siletz Reservation contests.

Apr. 27. Orig. letter H. H. S. to L. R. G., Portland, acknowledging "book of the Cunningham group" sent by registered mail, etc.

Apr. 30. Copy (with a carbon) of letter Commr. G. L. O. to Atty. A. W. Lafferty, Portland, re complaint against latter by a spl. agent; declines furnish copies report, etc., and returns \$10.

May 6. Copy (with a carbon) of letter Spl. Agent H. T. Jones, from Portland, to Otto Glock, Aloha, Wash., asking corroboration of statements of Wm. Campbell, Aberdeen, Wash., concerning Lafferty, etc.

May 6. Copy (with a carbon) of letter Spl. Agent Jones, Portland, to Commr. G. L. O., re disbarment proceedings against Atty. Lafferty.

May 15. Copy (with a carbon) of letter Commr. Dennett to R. & R., Portland, re said disbarment proceedings.

June 22. Orig. letter Commr. Dennett to L. R. G., Portland, acknowledging receipt, through H. H. S., of explanation re Cunningham journal, etc.

July 20. Carbon letter L. R. G. (?) to H. H. S., re former's expenses on Alaska trip

July 27. Orig. letter H. H. S. to L. R. G. as to latter's promotion in view of Alaska trip, etc.

Aug. 4. Orig. letter Josephine A. Patten to L. R. G., Nome, reporting as to work of the office.

Aug. 6. Orig. letter H. H. S. to L. R. G., Portland, enclosing carbon former's reply of same date to letter of 7-28 from G. D. Stearns re timber land contest.

Aug. 6. Copy letter Commr. Dennett to L. R. G., Portland, re reports of Spl. Agents H. T. Jones and R. P. Cowgill as to fraudulent timber & stone operations of H. E. G. Cooke and accomplices.

Aug. 14. Copy letter Commr. G. L. O. to C. F. D. Leroy O. Moore, Santa Fe, N. Mex., enclosing, for report, Bulletin No. 3, schedule of inquiries of National Conservation Commission. (Copy of the schedule attached.)

Sept. 3. Orig. (with "O. K.; H. H. S.," thereon) and carbon letter L. R. G. to H. H. S., re special agents remaining in field to clean up work and testify later.

Sept. 3. Carbon letter L. R. G. (?) to H. H. S., requesting Miss Patten's promotion to \$1,200.

Sept. 10. Carbon wire L. R. G. (?) to H. H. S. to transfer good stenographer from Washington, D. C., if possible.

Sept. 11. Orig. letter H. H. S. to L. R. G., Portland, re promotion of Miss Patten; at bottom notation personally by H. H. S.: "O. K.—done at \$1,200, H. H. S. Sept. 12."

Sept. 14. Orig. letter A. C. Shaw, Forest Service, Washington, D. C., to L. R. G., Portland, stating encloses copy of Commr.'s decision in a mineral case, etc.

Sept. 15. Orig. letter H. H. S. to L. R. G., Portland, re work of Spl. Agt. W. K. West, enclosing carbon of his letter same date to West.

Sept. 19. Carbon letter L. R. G. (?), Portland, to Commr. G. L. O., reporting re conditions in Alaska and necessity for increased per diem.

Sept. 23. Carbon letter L. R. G. (?), Portland, to A. C. Shaw, Forest Service, Washington, D. C., acknowledging letter 9-14 and copy of commr.'s decision in mineral case.

Sept. 30. Orig. letter Spl. Agent R. P. Cowgill from Lowry, Ida., to L. R. G., requesting \$100 be sent former at Jordan Valley.

Oct. 13. Copy (with a carbon) of letter commr. to R. & R., Portland, re Lafferty disbarment case.

Oct. 13. Copy (with a carbon) of letter commr. to L. R. G. re Lafferty disbarment case.

Oct. 14. Carbon letter L. R. G., Portland, to H. H. S., stating Cunningham affidavit received and copy of brief in case sent Secty. by H. H. S. would be of material assistance in investigation, etc.

Oct. 26. Copy (*with a carbon*) of letter L. R. G. (?), Portland, to Commr. G. L. O., reporting further re Atty. A. W. Lafferty.

Nov. 2. Carbon letter L. R. G. (?), Portland, to H. H. S., enclosing carbon wire 10-27-08 from L. R. G. (?), Portland, to Forester Pinchot—hearings ordered on seven enumerated homestead entries—Siletz Reservation; requests protests be withdrawn, etc. The letter states the wire prepared at Senator Bourne's request and discusses overlapping of forestry and G. L. O. work, etc.

Nov. 2. Orig. note signed "Phillips," from Vancouver, Wash., to L. R. G., transmitting copy letter 10-31-08 from C. F. D. Edward W. Dixon, Spokane, to R. & R., Vancouver, Wash., requesting copies all proof notices be forwarded for endorsement.

Nov. 2. Carbon letter L. R. G. (?) to H. H. S. concerning recent trial in cooperation with Becker, of Dept. of Justice—Becker's incompetency, etc.

Nov. 2. Carbon note L. R. G. (?), Portland, to H. H. S. as to Spl. Agent Rabb's possible Alaska trip, etc.

Nov. 3. Carbon letter L. R. G. (?), Portland, to H. H. S. re trial of H. E. G. Cooke in N. Y. City, 12-15-08, and Spl. Agent Jones' desire to have desk in G. L. O., etc.

Nov. 12. Carbon 27-page letter L. R. G. (?), Portland, to Commr. G. L. O., reporting on schedule of inquiries, Bulletin No. 3, National Conservation Commission.

Nov. 17. Orig. letter A. C. Shaw, Forest Service, Washington, D. C., to L. R. G. re coal land claims Siskiyou—Anderson and Anderson, etc.

Nov. 23. Carbon letter L. R. G. (?), Portland, to A. C. Shaw, recommending for a six-months' appointment in Forest Service David C. Adams, temporary special agent, to be furloughed.

Nov. 23. Orig. letter L. R. G. to H. H. S., quoting "P" A. C. B. letter of 11-17-08 re Wells case and asking if statement therein is the holding of the G. L. O. Letter bears personal notation by H. H. S.—*Not the holding, and adverse proceedings ordered.*

Nov. 28. *Four pages only* of carbon letter (which is incomplete); Commr. (?) to R&R Portland, re Lafferty disbarment matter.

Dec. 4. Carbon note L. R. G. (?), Portland, to H. H. S., referring to newspaper clipping and Borah's unfriendliness toward securing present-sized appropriation for next year.

Dec. 5. Orig. (and carbon) of letter L. R. G. to H. H. S., transmitting letter from Spl. Agent Jones 12-5 to L. R. G., re quotation in letter "P," A. C. B. of 11-23-08, of matter written by Jones as semi-confidential in C. V. Hare case.

Dec. —. Orig. memo. by Clerk A. C. Beach of G. L. O. in defense of the said letter prepared by him. Bears notation by H. H. S. explaining difficulty.

Dec. 9. Orig. letter Edward Doyle from Valdez, Alaska, to L. R. G., detailing movements and prospective movements to Fairbanks. Accompanied by memo. (or last page of a letter) from S. N. Stoner, undated, as to expenses of trip, etc.

Dec. 21. Orig. letter Josephine A. Patten to L. R. G., re various matters connected with the work of the office.

Dec. 23. Copy (*with a carbon*) of letter Commr. G. L. O. to Atty. Lafferty, Portland, re disbarment matter.

1909.

January 4, 1909. Orig. note from Wm. W. Adams of G. L. O., Wash., D. C., to L. R. G., Portland, transmitting copy (*with a carbon*) of following papers, re application of Dr. Henry W. Coe, of Washington, D. C., for mineral lands in vicinity of Spirit Lake, Wash.:

Excerpts (relevant to Coe claims) from report of 10-3-03, to Bureau of Forestry, Washington, D. C., by W. H. B. Kent, agt., on proposed Mt. St. Helens addition to Mt. Rainier Forest Reserve:

Letter 10-18-06, Chief Div. "N" to Chief Div. "P," G. L. O.

Reply 10-28-06, from Chief Div. "P."

Letter 2-25-07, Supt. Coast & Geodetic Survey to Asst Commr. Pollock, of G. L. O., enclosing copy letter 2-25 from Assistant Owen B. French, of that survey.

Wire 3-4-07, Spl. Agent Glavis to Commr. G. L. O.

Letter 3-4-07, Glavis through C. F. D. Dennett to Commr. G. L. O.

Letter 3-9-07 from Henry W. Coe from Bellevue-Stratford, Phila., to Asst. Commr. Pollock, of G. L. O.

Letter 5-7-07, Forester Pinchot to Commr. G. L. O.

Wire 5-8-07, Commr. G. L. O. to L. R. G. at US Land Office, Oakland, Cal.

Wire 5-8-07, L. R. G., Oakland, to Commr. G. L. O.

Wire 5-9-07, Commr. G. L. O. to Spl. Agt. Dixon, Portland, Ore.

Wire 5-10-07, Commr. G. L. O. to Spl. Agent Dixon.

Wire 5-10-07, Dixon to Commr. G. L. O.

Letter 5-16-07 Henry W. Coe to Commr. G. L. O.

Letter 5-21-07 Acting Forester James B. Adams to Commr. G. L. O.

Memo of evidence, prepared by Chief Division "N" G. L. O.
 Memo reviewing case from legal standpoint and giving opinion; by E. C. Finney, of G. L. O.

Jan. 4. Orig. letter Josephine A. Patten to L. R. G., re office matters.
 Jan. 11. Orig. letter J. A. Patten to L. R. G., at Hailey, Idaho, re office affairs.
 Jan. 18. Orig. letter J. A. Patten to L. R. G., re office matters.
 Jan. 24. Orig. personal letter Ralph Cowgill, Pullman, Wash., to L. R. G., re daily reports and non-official matters.

Jan. 25. Carbon letter L. R. G. to Cowgill in reply.
 Jan. 29. Carbon letter L. R. G. (?), Portland, to F. C. Bramwell, U. S. Land Office, La Grande, Ore., replying to letter sent him at Washington, D. C., re a prospective appointment.

Jan. 29. Carbon letter L. R. G. (?), Portland, to A. R. Bowman, Wathena, Kansas, re his permanent enrollment on special agent force, etc.

Jan. 29. Carbon letter L. R. G. (?) to H. H. S. re permission to bring heads of mountain sheep or moose out of Alaska, etc.

Feb. 2. Orig. pen letter Thos. S. Harrison to L. R. G. re former's temporary transfer in prospectu to field service in Alaska, etc.

Feb. 19. Carbon letter L. R. G. (?), Portland, to H. H. S. enclosing carbon former's letter same date to Hon. R. A. Ballinger, Seattle, Wash., re creation of a new field division for Oregon, Western Washington, and Alaska, with headquarters at Seattle.

Feb. 20. Orig. personal letter R. A. Ballinger to L. R. G. in reply—matter will be taken up after he reaches Washington, D. C.

March 5. Apparently original—though unsigned—letter bearing corrections and interlineations, presumably drafted by L. R. G., but never sent, to Commr. G. L. O. re departmental decision of 2-16-09 as to State of Oregon Desert Selection List No. 11, alleges affidavits false, etc.

March 5. Carbon letter L. R. G. (?) to H. H. S. re collections for timber cut on Alaska Forest Reserve.

March 5. Carbon letter L. R. G. (?) to Edward Doyle, Juneau, Alaska, explaining a wire of same date re collections on timber cut on Alaska Forest Reserve.

Mar. 29. Carbon letter L. R. G. (?), Portland, to Hon. Francis J. Heney (Spl. Asst. to U. S. Atty.-Gen'l.), San Fran., Cal., re report whether or not Binger Hermann should be tried or indictments dismissed. Certain papers referred to as enclosed; and copy (with a carbon) of list of papers sent is attached—and copy (with a carbon) of two only of the listed papers also attached, viz., telegram of 10-1-99 C. W. Fulton from Portland to Hon. Binger Hermann, Wash., D. C., and letter C. W. Fulton, Astoria, Ore., to Hon. John H. Hall, Portland.

April 15. Orig. letter A. Christensen, C. F. D. Portland, to L. R. G., C. F. D., Seattle, stating McCourt wants papers in A. W. Long case, which papers L. R. G. probably took to Seattle.

April 24. Copy wire H. H. S. to L. R. G. at Portland, Jones not available; continue investigation without him.

Apr. 24. Unsigned original letter from U. S. Atty. McCourt, Portland, to L. R. G. requesting Judge Ballinger's attention be called to instructing Oscar Lawler re Oregon cases before latter leaves California for Washington, D. C.

May 2. Copy note from L. R. G. to McCourt in reply.

May 21. Orig. letter U. S. Atty.-Genl. Wickersham to L. R. G. at Dept. of the Interior, requesting memo. of authorities furnished McCourt as reasons for not allowing defendant in Long case to inspect papers.

May 24. Yellow tissue press-copy letter L. R. G. from Washington, D. C., to the Attorney-General in reply—at length.

May —. Carbon letter L. R. G. (?) from Washington, D. C., to Attorney-General, returning copy (with a carbon)—both attached—of letter 5-19-09 from John McCourt, U. S. Atty., Portland, Ore., to Attorney-General, at length, as to the case and examination of the papers therein, etc. L. R. G. (?) tells Attorney-General believes letter (listed above) which he wrote him 5-24 covers the case, but encloses copies of papers as follows:

Copy letter 11-21-07 (?) A. W. Long, The Dalles, Ore., to Orin J. Gray, Portland, requesting cruise of SE ¼ sec. 1, T. 19-11 east, and information as to whether or not there is a squatter on it.

Copy letter 4-6-08 (?) Long (?), The Dalles, Ore., to O. J. Gray, Portland, stating letters from Bloss on claim mentioned are enclosed; outlined deal in scrip, and on another claim also.

Copy letter 4-7-08 O. J. Gray, Portland, to A. W. Long, The Dalles, stating N. P. Co. will not let scrip out of their possession, etc.; wants final receipt.

Copy letter 4-7-08 O. J. Gray, Portland, to A. W. Long, The Dalles—further on same subject.

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Copy letter 7-15-08 Acting Commr. S. V. Proudfit to A. W. Long, clerk U. S. Land Office, The Dalles, through the R&R, charging him with violation section 452 R. S.—ten days to show cause why should not be dismissed.

July 6. Carbon wire L. R. G. (?) to Commr. G. L. O. giving list of cities in which testimony must be taken in Cunningham cases, and stating Government's case would be strengthened by awaiting result of Alaska investigations.

Aug. 17. Copy long wire Acting Asst. Commr. H. H. S. to J. M. Sheridan, c/o McEniry, Denver, *via Seattle*, directing act as attorney for the government in Cunningham case and giving instructions.

— —. Copy wire J. M. Sheridan to H. H. S.—Arrived here (?) to-day and received telegram of 17th.

August 30. Copy wire Sheridan from Seattle to Schwartz, stating will leave for Washington, D. C., same night with all Cunningham papers.

August 30. Copy wire Sheridan, Seattle, to McEniry, Denver, to wire him \$50; must leave for Washington immediately.

Mr. CHRISTENSEN. And then on November 8 [reading]:

U. S. DEPARTMENT OF AGRICULTURE, FOREST SERVICE,
SNOQUALMIE NATIONAL FOREST,
Seattle, Wash., November 8, 1909.

Mr. ANDREW CHRISTENSEN,
Chief of Field Division, Seattle, Wash.

DEAR MR. CHRISTENSEN: I inclose some copies of original letters which were among some typewritten copies of letters transmitted to the Forest Service by Mr. Glavis on September 18.

Very sincerely, yours,

CHAS. R. PIERCE, *District Law Officer.*

MEMORANDUM OF PAPERS AND RECORDS DELIVERED TO MYSELF, ANDREW CHRISTENSEN, AT 219 FEDERAL BUILDING, SEATTLE, WASH., BY A MESSENGER OF THE FOREST SERVICE, ACCOMPANIED WITH THE FOLLOWING LETTER FROM CHARLES R. PIERCE, DISTRICT LAW OFFICER.

SEATTLE, WASH., *November 8, 1909.*

Mr. ANDREW CHRISTENSEN,
Chief of Field Division, Seattle, Wash.

DEAR MR. CHRISTENSEN: I inclose some copies of original letters which were among some typewritten copies of letters transmitted to the Forest Service by Mr. Glavis on September 18.

Very sincerely, yours,

CHAS. R. PIERCE,
District Law Officer.

Copy of receipt dated June 8, 1907, given by L. R. Glavis to Edward W. Dixon, chief of first field division, for all papers relating to coal-land fraud case, Lewis County, Wash.

A memorandum, evidently in Glavis's handwriting, concerning said case.

Affidavit of James A. O'Keane, made before Louis R. Glavis, special agent, General Land Office.

(Original affidavit made by Frank L. Huston before Louis R. Glavis, December 1, 1906.

Memoranda of data, evidently in the handwriting of Glavis, concerning certain lands in townships 12 and 13 N., ranges 5 and 6 E.

Carbon copy of report dated January 4, 1904, made by Special Agent Louis R. Glavis, addressed to the Commissioner of the General Land Office, relating to coal-land frauds in Lewis County, Wash.

Carbon copies of Exhibits B, C, and D of said report.

Original memoranda, evidently prepared by Louis R. Glavis, concerning law covering coal-land entries.

Copy of defendants' answer in the case of United States of America, complainant, v. Portland Coal and Coke Company. Suit No. 1280.

Copies of stipulations in suit No. 1285, United States of America, complainant, v. Portland Coal and Coke Company et al.

Original letter dated November 17, 1908, from Elmer E. Todd, United States attorney, addressed to Louis R. Glavis, transmitting copies of decrees entered in the Portland Coal and Coke Company cases.

Also the said copies of decrees, being 1280, 1281, 1282, 1283, 1284, and 1285.

Original letter dated April 30, 1908, from Andrew Kennedy to L. R. Glavis, relating to coal lands in Alaska.

An envelope marked "No. 2, Matanuska coal field," containing commissioner's letter "P"-06-49023, O. W. L., to H. C. Love, dated April 2, 1906, inclosing a letter from Morse S. Duffield, of Valdez, Alaska, stating that a number of coal-land entries aggregating 12,280 acres had been applied for in the Chickaloon Creek district of Matanuska River, Alaska, in the interest of an association of Chicago capitalists; also a copy of said letter from Duffield.

A blank envelope containing commissioner's letter "P" F. R. D., 07-55640, April 8, 1907, addressed to E. W. Dixon, inclosing copies of an affidavit made by one H. S. Howe, and a letter from Special Inspector A. R. Green, wherein coal-land frauds are charged along the eastern slope of the Cascade Mountains; also a copy of said letter and affidavit.

Original letter from Acting Commissioner Pollock, "P" 21157-07, F. R. D., dated February 13, 1907, addressed to J. H. Alexander, special agent, G. L. O., Portland, Oreg., inclosing copy of letter from one C. A. Klien, of Heppner, Oreg., wherein he alleges that over a year ago he complained of certain timber and coal land frauds in the State of Oregon. A copy of said Klien's letter to the President, and an original letter dated March 16, 1907, without address, signed Charles A. Klien, Heppner, Oreg.

Letter from W. A. Reynolds, attorney at law, Chehalis, Wash., addressed to Frank E. Vaughn, Vancouver, Wash., relating to reports and testimony of O'Keane and Wingate, in re certain coal fields in Lewis County, Wash.

Original letter dated July 17, 1907, from L. J. Davis, of Curtis, Lewis County, Wash., sent to the United States attorney at Portland, Oreg., relating to certain coal-land frauds.

Original letter from W. C. Bristol, dated July 20, 1907, transmitting said letter to Thomas B. Neuhausen, Acting Chief of Field Division, Portland, Oreg.

Original letter dated October 28, 1907, from L. R. Glavis, Chief of Field Division, to L. J. Davis, Curtis, Lewis County, Wash., acknowledging receipt of Davis's letter of July 17, 1907.

Original letter from L. J. Davis, dated November 7, 1907, addressed to L. R. Glavis, relating to said alleged coal-land frauds.

The CHAIRMAN. That will all be admitted.

Mr. CHRISTENSEN. Among those papers were also a number of other papers.

The CHAIRMAN. They will all be admitted.

Mr. VERTREES. Mr. Christensen, was there any communication about the 19th of October from Mr. Shaw to Mr. Pierce also?

Mr. CHRISTENSEN. Yes, sir; there were several letters between Mr. Shaw and Mr. Sheridan; but I have not them with me. I assume that Mr. Sheridan will have them.

Mr. VERTREES. Were they transmitting papers from that office to your office, papers that probably belonged to them?

Mr. CHRISTENSEN. No; they were not transmitting letters or papers; they were simply explaining from what source they had received them and where they had been in the meantime, giving an account in full to Mr. Sheridan as to the facts in the case.

Mr. VERTREES. You have no copy of that letter?

Mr. CHRISTENSEN. I have not it here. Mr. Sheridan has it.

Mr. VERTREES. Were any of these missing letters, these 24 letters, among the papers that were returned on these occasions?

Mr. CHRISTENSEN. I do not catch your question.

Mr. VERTREES. Were any of the 24 missing letters, or copies of them, among the papers that were returned on this occasion?

Mr. CHRISTENSEN. No, sir; they were not.

Mr. VERTREES. Well, did you see Mr. Glavis further after that in regard to the papers; have any further communication or correspondence with him on the subject?

Mr. CHRISTENSEN. I did not see him personally, but as a result of my interview with him at that time I had some correspondence with him.

Mr. VERTREES. About what date does your correspondence begin with him; the next I am about to ask about?

Mr. CHRISTENSEN. November 5, the same date that he turned these papers over to me, I wrote him a letter at his request.

Mr. VERTREES. What do you mean by "his request?" State what you mean by that?

Mr. CHRISTENSEN. That matter relates to something I have other correspondence on, and probably should be covered by previous correspondence in relation to it. It is not my intention to bring that up now.

Mr. VERTREES. Very well. Just go on in your own way and in an orderly way.

Mr. CHRISTENSEN. I had probably better take this up now. On October 13, 1909, I wrote to Mr. Schwartz and called his attention to Mr. Glavis's account for August, 1909, in which this charge of \$55 was included [reading]:

PORTLAND, OREG., October 13, 1909.

Hon. H. H. SCHWARTZ,
Chief of Field Service, Washington, D. C.

MY DEAR Mr. SCHWARTZ: In connection with Glavis's trip to Beverly and his expenditures for transportation, stenographic work, etc., I am inclosing herewith for your information copy of his expense account for the month of August, 1909. You will note that there is a charge of \$55 for stenographic work in Chicago on August 15th. This was included in his account and a check drawn in his favor and duly paid. After it was paid, however, he decided not to take credit for the \$55 and directed Spaulding to prepare a new voucher, eliminating that charge from his account. Mr. Spaulding told him, however, that, inasmuch as the check had been issued, he would be unable to make the correction. He told Spaulding that he could easily make a mistake in addition and to correct it in that way. This has not been done.

I went over the matter of the accounts with Mr. Spaulding when in Seattle, on the 11th, and find that they are in very bad condition, but Spaulding has taken all the action that he can at this time, and Glavis will have to attend to the matter in the future in order to have his accounts finally closed out. I do not know whether your office will pay him for all of his expenses in connection with his trip to Beverly, and the matter is submitted to you for such action as you desire to take.

Very respectfully,

Chief of Field Division.

VOUCHER FOR SERVICES AND TRAVELING AND OTHER EXPENSES.

[Appropriation: Protecting Public Lands, Timber, etc., 1909-10.]

The United States, To Louis R. Glavis, Chief Field Division, Dr., 219 Federal Building, Seattle, Wash., Voucher No. 23.

Date.	Sub-voucher number.	Itemized statement of expenses.	Amount.
Aug 4	To N. P. Ry. Co., Portland, Ore., fare, Portland, Ore., to Seattle, Wn....	\$5.60
4	To N. P. Ry. Co., Portland, Ore., sleeper, Portland to Seattle, Wn.....	2.00
4	To transfer baggage, hotel to depot, Portland, Ore.....	.50
4	To bus fare, hotel to depot, Portland, Ore.....	.25
5	To fee to porter en route to Seattle.....	.25
5	To transfer baggage, depot to hotel, Seattle, Wn.....	.25
6	To N. P. Ry. Co., Seattle, Wn., sleeping-car fare, Seattle to Spokane, Wn.....	2.50
6	To transfer baggage, hotel to depot, Seattle, Wn.....	.50

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The United States, To Louis R. Glavis, Chief Field Division, Dr., 219 Federal Building, Seattle, Wash., Voucher No. 25—Continued.

Date.	Sub-voucher number.	Itemized statement of expenses.	Amount.
Aug. 7	1	To Annie Flexner, Portland, Ore., for typewriting and comparing twenty-three (23) pages.....	\$1.00
7		To fee to porter on sleeper en route Spokane.....	.15
7		To transfer baggage, depot to hotel, Spokane, Wn.....	.20
10		To N. P. Ry. Co., Spokane, Wn., sleeping-car fare, Spokane, Wn., to St. Paul, Minn.....	2.25
11		To fee to porter en route, Spokane to St. Paul, Minn.....	.15
12		To fee to porter, en route, Spokane to St. Paul, Minn.....	.20
13		To fee to porter, en route, Spokane to St. Paul, Minn.....	.20
13		To parlor-car fare, St. Paul, Minn., to Chicago, Ill.....	1.15
13		To bus fare, depot to hotel, Chicago, Ill.....	.20
13		To transfer baggage, depot to hotel, Chicago, Ill.....	.20
15		To bus fare, hotel to depot, Chicago, Ill.....	.20
15		To transfer baggage, hotel to depot, Chicago, Ill.....	.20
15	2	To Lorene Sheets, Chicago, Ill., for 96 pages copy, with 2 carbons, and 51 pages dictated, with 2 carbons, at \$55.00 per job.....	\$52.40
16		To fee to porter on sleeper en route New York City.....	.15
16		To transfer baggage, depot to house, New York City.....	.20
16		To N. Y., N. H. & H. R. R. Co., sleeper, N. Y. City to Boston.....	1.25
17		To fee to porter en route, N. Y. City to Boston, Mass.....	.20
17		To B. & M. R. R. Co., fare, Boston to Beverly, Mass. No reduction for round trip.....	.25
17		To bus fare, depot to hotel, Beverly, Mass.....	.20
18	3	To Warner Livery Stable, Beverly, Mass., hire of hack & horse, with driver (no expenses) to country & return, from 2.30 p. m., Aug. 18th, to 5 p. m., Aug. 18th, at \$1.50 per first hour and \$1.00 each succeeding hour.....	2.20
18		To B. & M. R. R., fare, Beverly to Boston, Mass.....	.20
20	4	To Mary A. Dootson, Boston, Mass., for typewriting three pages of legal cap at \$0.35 per page and six pages carbon copy, at \$0.05 per page.....	1.15
23		To N. Y., N. H. & H. R. R., sleeping-car fare, Boston, Mass., to New York City, N. Y.....	1.15
24		To fee to porter en route, Boston, Mass., to N. Y. City.....	.20
24		To transfer baggage, house to depot, N. Y. City.....	.20
24		To N. Y. C. Ry., sleeper, New York City to Chicago, Ill.....	1.00
24		To W. U. Tel. Co., Albany, N. Y., to Ella Shartell, Seattle, Wash., 23 words.....	.40
25		To fee to porter en route N. Y. City to Chicago, Ill.....	.20
25		To transfer baggage, depot to hotel, Chicago, Ill.....	.20
25		To bus fare, depot to hotel, Chicago, Ill.....	.20
26		To W. U. Tel. Co., Chicago, Ill., telegram to Ella Shartell, Seattle, Wash., 26 words.....	.60
29		To C. N. W. Ry., Chicago, Ill., sleeper to St. Paul, Minn.....	1.00
29		To bus fare, hotel to depot, Chicago, Ill.....	.20
29		To transfer baggage, hotel to depot, Chicago, Ill.....	.20
30		To fee to porter on sleeper, en route.....	.20
31		To fee to porter on sleeper, en route.....	.20
		Notary fee to this account.....	.20
10		To transfer baggage, depot to hotel, Spokane, Wn.....	.20
TRANSPORTATION REQUESTS.			108.25
10	47913	N. P. Ry. Co., fare, Spokane, Wash., to Chicago, Ill.....	46.75
15	47914	Pa. Ry. Co., fare, Chicago, Ill., to N. Y. City.....	20.00
15	47915	Pa. Ry. Co., berth and extra fare, Chicago, Ill., to New York City.....	15.00
16	47916	N. Y., N. H. & H. R. R., fare, N. Y. City to Boston, Mass.....	4.00
23	47917	N. Y., N. H. & H. R. R., fare, Boston, Mass., to New York City.....	4.00
24	47918	N. Y. C. R. R., fare, N. Y. City to Chicago, Ill.....	24.00
27	47919	C. N. W. Ry., fare, Chicago, Ill., to Portland, Ore.....	54.00
27	47920	P. P. C. Co., berth, St. Paul, Minn., to Seattle, Wn.....	12.00

The CHAIRMAN. Those papers are admitted.

Mr. CHRISTENSEN. Then on October 18, I received a telegram from Mr. Dennett, as follows [reading]:

[Telegram.]

WASHINGTON, D. C., October 18, 1909.

Special Agt. CHRISTENSEN,
219 Federal Bldg., Seattle, Wash.:

Make personal and formal demand on Krifac for the original and two carbon copies by him paid for in voucher two, signed Relomo Cyoodx, Chicago, Illinois, August fifteenth. If he has mailed or delivered the original or carbon to other persons, require

statement from him as to their whereabouts. These are official records. I assume the voucher refers to his statement to the Blocatomd. If so original is not required as the office has been supplied with copy thereof, but you will require Krifac to furnish you with the two carbons at once. Duplicates will not do.

DENNETT, *Commr.*

[Telegram.]

WASHINGTON, D. C., October 18, 1909.

Special Agent CHRISTENSEN,
219 Federal Bldg., Seattle, Wash.:

Make personal and formal demand on Glavis for the original and two carbon copies by him paid for in voucher two, signed Lorena Sheetz, Chicago, Illinois, August fifteenth. If he has mailed or delivered the original or carbon to other persons, require statement from him as to their whereabouts. These are official records. I assume the voucher refers to his statement to the President. If so, original is not required as the office has been supplied with copy thereof, but you will require Glavis to furnish you with the two carbons at once. Duplicates will not do.

DENNETT, *Commr.*

The CHAIRMAN. That is admitted.

Mr. CHRISTENSEN. On October 19, I wired in reply:

[Telegram.]

PORTLAND, OREGON, October 19, 1909.

COMMISSIONER GENERAL LAND OFFICE,
Washington, D. C.:

Baje eighteenth Krifac address unknown. Will make proper demand immediately when he arrives Seattle.

CHRISTENSEN.

[Telegram.]

PORTLAND, OREGON, October 19, 1909.

COMMISSIONER GENERAL LAND OFFICE,
Washington, D. C.:

Matter mentioned in your telegram eighteenth Glavis address unknown. Will make proper demand immediately when he arrives Seattle.

CHRISTENSEN.

The CHAIRMAN. It is admitted.

Mr. CHRISTENSEN. On October 19 I wrote Mr. Schwartz:

PORTLAND, OREG., October 19, 1909.

Hon. H. H. SCHWARTZ,
Chief of Field Service,
General Land Office, Washington, D. C.

MY DEAR SCHWARTZ: I am in receipt of a telegram from the commissioner of the 15th inst., directing me to make personal and formal demand upon Glavis for the papers mentioned therein. The telegram was forwarded to me while I was at Seattle last evening and I immediately made arrangements with Messrs. Sheridan and Kennedy to advise me when Mr. Glavis arrives in Seattle, when I will immediately proceed there and make the proper demand.

The present whereabouts of Mr. Glavis are unknown at the present time, but Mr. Kennedy informs me that he wrote him on October 2nd, to hold all mail until his arrival. He is therefore expected in Seattle almost every day.

Very respectfully, yours,

Chief of Field Division.

The CHAIRMAN. That is admitted.

Mr. CHRISTENSEN. On October 25 I wrote Mr. Glavis:

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Seattle, Washington, October 25, 1909.

Mr. L. R. GLAVIS,
Lincoln Hotel, Seattle, Washington.

SIR: I desire to consult you concerning certain records of this office and should be pleased if you would call at the office at about 9.30 a. m., Tuesday, October 26th, for that purpose. If you can not come at that time, please call me over the telephone and advise me when you can come.

Very respectfully,

Chief of Field Division.

The CHAIRMAN. That is admitted.

Mr. CHRISTENSEN. On October 28 I wrote Mr. Schwartz:

PORTLAND, OREG., October 28, 1909

Hon. H. H. SCHWARTZ,
Chief of Field Service, Washington, D. C.

MY DEAR SCHWARTZ: Referring further to the telegram from the commissioner of October 18, 1909, directing me to make personal demand upon Glavis for the original and two carbons paid for by him to a stenographer in Chicago, I have to advise you that I was in Seattle from Saturday morning until Tuesday night, but I was unable to get an interview with Glavis.

He arrived some time late Sunday evening, and all day Monday I endeavored to locate him, but neither myself nor Mr. Sheridan nor any of the reporters could find him. About eight thirty in the evening I succeeded in getting him over the telephone at the Lincoln Hotel, and he assured me that he would call me by phone Tuesday morning about nine o'clock and advise me when I could see him. He stated he contemplated leaving the city some time during that day, but was not sure just when he would go. When I arrived at the office the next morning, I was much surprised when Mr. Kennedy informed me that he left Monday evening at 10.40, shortly after he telephoned me, for the South, and that he desired his mail forwarded to him at Vancouver.

He also left word with Kennedy to forward the papers relating to his accounts to Vancouver. This was not done, for the reason that they are official records, and should not leave the office until properly disposed of by him.

I am now endeavoring to get into communication with him, either through letter or otherwise, and shall make proper demand upon him just as soon as he can be reached.

No doubt during Monday he was in consultation with Shaw, of the Forest Service and was probably advised to leave the city without an interview with either Mr. Sheridan or myself. Mr. Shaw, as you have been previously advised, turned over certain records to Mr. Sheridan, which were forwarded to him by Glavis, and which properly belong to the office. Shaw could not give a proper explanation of his reasons for being in possession of those papers, and Glavis, no doubt, did not want to be interviewed concerning them. On my next trip to Seattle I will ascertain what Shaw's reply is, and will take such further action as the facts in the case may warrant. These are government records, and they were taken unlawfully from the office by Glavis, and it is possible that it may be necessary to take the matter up through the United States attorney.

Very respectfully,

Chief of Field Division

Senator SUTHERLAND. To what records are you referring there? I did not quite get that, Mr. Christensen.

Mr. CHRISTENSEN. Those records I refer to in those letters were those returned to the office by Messrs. Shaw and Pierce on October 19.

Senator SUTHERLAND. What was the nature of them?

Mr. CHRISTENSEN. Those were records that Mr. Shaw, I understand, informed Mr. Sheridan were inadvertently sent by Mr. Glavis to the Forest Service—a large number of the original papers belonging to the office.

Senator SUTHERLAND. Relating to what?

Mr. CHRISTENSEN. Relating to the files in the office; and some of them particularly to the Washington Coal and Coke Company case, and the Wilson case, of which you have heard. On October 28, Mr. Glavis wrote me [reading]:

PORTLAND, OREGON, October 28, 1909.

Mr. ANDREW CHRISTENSEN,
Chief of Field Division, Portland, Oregon.

DEAR SIR: I left Seattle the other night and was therefore unable to meet you here. Mr. Kennedy no doubt has advised you that I was unable to do so.

It is very doubtful when I will return to Seattle and I therefore suggest that you write me concerning the matters which you desire to discuss.

I also wish you would hand to Mr. Kennedy all the letters and records pertaining to my accounts, as I desire to submit them to Washington at an early date, in order that my disbursing account may be closed out.

Respectfully,

L. R. GLAVIS.

Mr. CHRISTENSEN. Here is another letter in the chain of investigation:

PORTLAND, OREG., November 4, 1909.

Mr. H. H. SCHWARTZ,
Chief of Field Service, Washington, D. C.

MY DEAR MR. SCHWARTZ: Referring to my letter to you of recent date relative to the possible criminal prosecution of Mr. Glavis and Mr. Shaw for embezzlement, stealing or concealing property belonging to the Government, I am inclosing herewith the original voucher filled in by Mr. Glavis for the charge of \$55.00 for copying his report in Chicago, and signed by Lorene Sheetz, of Chicago; and also the original voucher made by Glavis and signed by Mary A. Dootson, of Boston, Mass., for \$1.35.

I also attach the original account of Mr. Glavis for the month of August, 1909, which was copied by Mr. Spaulding, a copy of which I have heretofore forwarded to you.

I am sending these to you so that in case criminal prosecution is brought certified copies can be made thereof for use in any possible trial; also so that Mr. Glavis cannot compel me to deliver them to him when he discovers that I have taken them from his accounts. I have left copies of these vouchers with his papers so that it will not delay him in closing his accounts with your department.

Very respectfully,

Chief of Field Division.

On November 5, 1909, I wrote Mr. Schwartz as follows:

PORTLAND, OREGON, November 5, 1909.

Mr. H. H. SCHWARTZ,
Chief of Field Service,
Washington, D. C.

SIR: I have to inform you that I succeeded in getting an interview with Mr. Glavis to-day, after considerable scouting. I found him in conference with A. C. Shaw, the assistant district forester, and the district forester, in the office of the latter. They seemed much surprised at my sudden appearance.

I requested Mr. Glavis to accompany me to the office in order that I might question him concerning official matters, but he declined to do so, and only went as far as the hall. I then made personal demand upon him for the two copies of the typewriting mentioned in the voucher of Lorene Sheetz, of Chicago. He first stated that he had overlooked turning this over to me and that he would look into the matter and send them to me. I asked him what disposition he had made of them, but he evaded the question and finally stated that I should write him, when he would make full statement to me. It was impossible to get any definite statement from him. He agreed fully that they were official records and that they should have been left in the office, but could not or would not account for his failure to turn them over to me.

I also questioned him concerning the records which were turned over to Mr. Shaw by him, and by Mr. Shaw to Mr. Sheridan, but he declined to make any statement concerning them.

I have therefore written him and have requested him to reply to certain questions, a copy of which letters are attached herewith.

Very respectfully,

Chief of Field Division.

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Here is a letter to Glavis:

PORTLAND, OREG., November 5, 1909

Mr. L. R. GLAVIS,
Care of United States Land Office,
Vancouver, Wash.

SIR: Referring to our conversation of even date, in which I requested you to furnish me with the original carbon copies of the official matters, for which you paid \$55 to Lorene Sheetz, of Chicago, Ill., on the following voucher, which was included in your expense account for the month of August, 1909, and for which you have been reimbursed by check drawn in your favor by yourself:

"Subvoucher for traveling and other expenses, No. 2.

"August 15, 1909.

"Received of L. R. Glavis, chief of field division, fifty-five no/100 dollars, in cash in full payment of following account:

"To 96 pages copy with 2 carbons, and 51 pages dictated with 2 carbons,
at \$55 per job..... \$55.00

"LORENE SHEETZ,
"918 First National Bank Bldg., Chicago, Ill."

you were unable to account for their whereabouts, nor would you state what disposition you made of the two carbons. You informed me, however, that the original had been forwarded to the President.

Demand is therefore hereby made upon you for the 2 carbons of 96 pages of copy and 51 pages of dictation mentioned in the above-described voucher.

If I am not in receipt of said carbons within five days after you receive this letter, or a letter from you making full statement of the whereabouts of said carbons from the time they were completed by the stenographer until the present time, necessary action will be taken by this office with a view to protecting the interests of the Government.

Very respectfully,

Chief of Field Division.

I wrote him on the same date:

PORTLAND, OREG., November 5, 1909.

Mr. L. R. GLAVIS,
c/o U. S. Land Office, Vancouver, Wash.

SIR: In connection with my letter to you of even date in which I made formal demand upon you for certain official records which are now in your possession and which are unlawfully retained by you, I have to request that you answer the following questions:

1. What disposition was made of the two carbons immediately after they were received by you from the stenographer?
2. Was one of the copies of said carbon delivered to any person?
3. If so, state to whom it was delivered and how long he had it in his possession?
4. If you are returning both carbons to me, and if one of the carbons was delivered to any person, state when it was returned to you?
5. If both copies have been delivered to other persons, state to whom and when they were both returned to you.
6. What was the understanding between yourself and the parties to whom they were delivered as to the disposition to be made of them?
7. Are you now returning to me the original carbon copies or are they only duplicates of the carbons?

It is further requested that you make reply to the foregoing questions under oath and accompany your reply with the carbon copies.

Very respectfully,

Chief of Field Division.

Mr. Glavis replied to those two letters of November 5, 1909:

PORTLAND, OREG., November 15, 1909.

Mr. A. CHRISTENSEN,
Chief of Field Division, General Land Office, Portland, Oreg.

SIR: Replying to your two letters, dated November 5, in reference to the two carbon copies of my report to the President, you are advised that I have no such copies, and

that the same are either in your possession or are among the papers I furnished the Forest Service, for their assistance in the trials of the coal cases.

The above is a correct statement regarding the whereabouts of the papers, and in our letter of November 5, you have misquoted my conversation with you.

Very respectfully,

L. R. GLAVIS.

On November 11 Mr. Schwartz wrote me as follows:

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., November 11, 1909.

Mr. A. CHRISTENSEN,
Chief of Field Division, Portland, Oreg.

SIR: Herewith is returned to you original vouchers and original lead-pencil memorandum of Mr. Glavis's accounts, together with two sets of photographic copies^a hereof.

Respectfully,

H. H. SCHWARTZ,
Chief of Field Service.

Aug. 4.	N. P. Ry. Co., fare, Portland, Ore., to Seattle, Wash.	\$5.60
	N. P. Ry. Co., sleeper, Portland, Ore., to Seattle, Wash.	2.00
	Transfer baggage, hotel to depot, Portland, Ore.	.50
	Bus fare, hotel to depot, Portland, Ore.	.25
5.	Fee to porter on sleeper	.25
	Transfer baggage, depot to hotel, Seattle, Wash.	.25
6.	N. P. Ry. Co., sleeper, Seattle to Spokane, Wash.	2.50
	Transfer baggage, hotel to depot, Seattle, Wash.	.50
7.	To Amies Flexner, Portland, Ore., for	5.60
	Fee to porter on sleeper	.25
	Transfer baggage, depot to hotel, Spokane	.50
10.	Transfer baggage, hotel to depot, Spokane	.50
	N. P. Ry. Co., sleeper, Spokane, Wash., to St. Paul, Minn.	9.50
11.	Fee to porter on sleeper	.25
12.	Fee to porter on sleeper	.25
13.	Fee to porter on sleeper	.25
	Pullman parlor car fare, St. Paul, Minn., to Chicago, Ill.	1.25
	Bus fare, depot to hotel, Chicago	.50
	Transfer baggage, depot to hotel, Chicago	.50
15.	Bus fare, hotel to depot, Chicago	.50
	Transfer baggage, hotel to depot, Chicago	.50
	To Lorene Sheetz, Chicago, Ill., for typewriting 146 pages & 2 carbon copies, at \$55.00 per job (voucher 1)	55.00
16.	Fee to porter on sleeper	.25
	Transfer baggage, depot to house, New York City	.50
	N. Y., N. H. & H., sleeper, New York City to Boston, Mass.	1.50
17.	Fee to porter on sleeper	.25
	Boston & Maine R. R., fare, Boston to Beverly, Mass. (no reduction round trip ticket)	.35
	Bus fare, depot to hotel, Beverly, Mass.	.25
		84.70
18.	To Warner Livery Stable, Beverly, Mass., hire hack & driver, no expenses, to country & return, from 2.30 p. m. to 5.30 p. m., Aug. 18th, at \$1.50 per first hour & \$1.00 each succeeding hour (V. 2)	3.50
	B. & M. R. R., fare, Beverly to Boston, Mass.	.35
20.	To —, Boston, Mass., for copy 3 pages legal cap, at 35 cts. per page & six pages carbon copy at 5 cts. per page (V. 3)	1.35
23.	N. Y., N. H. & H., sleeper, Boston, Mass., to New York City	1.50
24.	Fee to porter on sleeper	.25
	Transfer baggage, house to depot, New York City	.50
	N. Y. Central Ry., sleeper, New York City to Chicago, Ill.	5.00
	Telegraph message from Albany, N. Y., to Ella Shartell, Seattle, Wash. (23 words)	.46
25.	Fee to porter on sleeper	.25
	Transfer baggage, depot to hotel, Chicago, Ill.	.50
	Bus fare, depot to hotel, Chicago, Ill.	.50

^a Photographic copies not reproduced.

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26. Telegraph message from Chicago to Ella Shartell, Seattle, Wash., 26 words.....	\$0.47
29. C. N. W. Ry., sleeper, Chicago to St. Paul, Minn.....	2.00
Bus fare, hotel to depot, Chicago.....	.50
Transfer baggage, hotel to depot, Chicago.....	.50
30. Fee to porter on sleeper.....	.25
31. Fee to porter on sleeper.....	.25
Notary fee to this account.....	.56
Total.....	108.93
Per diem, Aug. 1 to Aug. 31, 31 days, at \$3.....	93.00
Salary, Aug. 1 to Aug. 31, at \$2,220.00 per annum.....	185.00
	386.93

TRANSPORTATION REQUESTS.

Aug. 10—T. R. 47913, N. P. Ry. Co., fare, Spokane, Wash., to Chicago, Ill. (\$46.70)	
15—47914, Penn. R. R. Co., fare, Chicago, Ill., to New York City (\$20.00).	
47915, Penn. R. R. Co., berth & extra fare, Chicago, Ill., to New York City (\$15.00).	
16—47916, N. Y., N. H. & H. R. R., fare, New York City to Boston, Mass. (\$4.65).	
23—47917, N. Y., N. H. & H. R. R., fare, Boston, Mass., to New York City (\$4.65).	
24—47918, N. Y. C. R. R., fare, New York City to Chicago, Ill. (\$24.00).	
27—47919, C. N. W. Ry. Co., fare, Chicago, Ill., to Portland, Ore. (\$56.90).	
47920, Pullman Co., berth, St. Paul, Minn., to Seattle, Wash. (\$12.00).	

[Copy.]

To Lorene Sheetz & Company, public stenographers, 918 First Nat'l Bank Bldg.

To 96 pages copy with 2 carbons ea., at	\$26.56
To 51 pages dictated with 2 carbons ea., at	28.45
	\$55.01

Received payment.

(Signed) LORENE SHEETZ & Co

Department of the Interior, General Land Office. 4—160. Form approved by Comptroller of the Treasury April 11, 1908.

SUBVOUCHER FOR TRAVELING AND OTHER EXPENSES. No 4

AUGUST 20, 1909.

Received of L. R. Glavis, Chief of Field Division, one and 35/100 dollars in cash in full payment of following account:

For typewriting three pages of legal cap, at \$.35 per page, and.....	\$1.65
six pages, carbon copy, at 5 cts. per page.....	.35
Total.....	1.35

(Signed) MARY A. DOOTSON.
Boston, Mass.

(Not to be signed in duplicate.)

[Copying, multigraphing, correspondence, mimeographing. Telephones: Central 6104; Automatic 704

STENOGRAPHIC BUREAU.

LORENE SHEETZ & COMPANY.

Law stenography a specialty. All kinds of high-grade stenographic work. Notary public. 918 First National Bank Building, Chicago.

LORENE SHEETZ.

DAISY M'CLEARY

Department of the Interior, General Land Office. 4—160. Form approved by Comptroller of the Treasury April 11, 1908.

INVESTIGATION INTERIOR DEPT. AND BUREAU OF FORESTRY. 2725

SUBVOUCHER FOR TRAVELING AND OTHER EXPENSES. No. 2

AUGUST 15, 1909.

Received of L. R. Glavis, Chief of Field Division, fifty-five no/100 dollars in cash, in full payment of following account:

To 96 pages copy with 2 carbons and 51 pages, dictated, with 2 carbons, at \$55 per job..... \$55.00
Total..... 55.00

(Signed) LORENE SHEETZ,
918 First National Bank Bldg., Chicago, Ill.

(Not to be signed in duplicate.)

That was in response to my letter of November 4.

The CHAIRMAN. Those documents are all admitted.

Mr. CHRISTENSEN. When Mr. Pierce turned over to me in Seattle, Wash., on November 8, a number of official records, I wrote him on November 10, as follows:

PORTLAND, OREG., November 10, 1909.

Mr. CHARLES R. PIERCE,
District Law Officer, Forest Service, Seattle, Wash.

SIR: On November 8, 1909, while in Seattle, Wash., I received from you the papers which are enumerated in the attached memorandum. In your letter transmitting said papers you state as follows:

SEATTLE, WASH., November 8, 1909.

Mr. ANDREW CHRISTENSEN,
Chief of Field Division, Seattle, Wash.

DEAR MR. CHRISTENSEN: I inclose some copies of original letters which were among some typewritten copies of letters transmitted to the Forest Service by Mr. Glavis on September 18.

Very sincerely, yours,

(Signed) CHAS. R. PIERCE,
District Law Officer.

In connection with the attached memorandum, I would respectfully request that you answer the following questions:

(1) To whom were these papers delivered by Mr. Glavis; when were they delivered, and under what circumstances? State fully when they first came into your possession and how long you held them.

(2) What explanation, if any, did Mr. Glavis give you for turning over to you original papers belonging to the office of the Chief of Field Division at Seattle, Wash., relating to important matters pending therein?

In view of the fact that it is important that this office may have full information at all times of the whereabouts of important records belonging to the General Land Office, it is requested that you give this your immediate attention, and advise me fully of the facts in the case. You will readily understand that this office is interested in knowing what use has been made of the records belonging thereto, how they came into your possession, and how long they have been there.

Please address me at Seattle at the earliest date practicable.

Very respectfully,

Chief of Field Division.

Mr. CHRISTENSEN. Mr. Pierce replied on November 14, 1909, from Seattle, as follows [reading]:

[L. Chugach-Claims. Cunningham Coal Groups, Juneau.]

SEATTLE, WASH., November 14, 1909.

Mr. A. CHRISTENSEN,
Chief of Field Division, General Land Office, Seattle, Wash.

DEAR MR. CHRISTENSEN: Mr. Shaw's letter of October 25 to Special Agent Sheridan replies fully to certain inquiries of similar character to yours propounded to him by Mr. Sheridan.

The originals I returned to you were inadvertently overlooked by Mr. Shaw and myself at the time the first few were sorted out and returned to you. So far as I am

2726 INVESTIGATION INTERIOR DEPT. AND BUREAU OF FORESTRY.

aware, the Forest Service has no more original letters or original documents of any character among the carbons delivered by Mr. Glavis to the service.

Very sincerely, yours,

CHAS. R. PIERCE, *District Law Officer.*

On November 10, I wrote Mr. Schwartz concerning this matter, as follows [reading]:

PORTLAND, ORE., November 10, 1909.

Hon. H. H. SCHWARTZ,
*Chief of Field Service, G. L. O.,
Washington, D. C.*

SIR: I attach herewith copies of two memoranda concerning certain records of the office of Chief of Field Division at Seattle, Wash., which are self-explanatory. The records mentioned in the memorandum of papers received from Glavis, accompanied by his letter of November 5, 1909, addressed to myself, were received from Glavis in the office of the district forester at Portland, Ore., about 11.30 a. m., November 5.

I had been looking for Mr. Glavis, in connection with making demand upon him for other papers, when these papers were delivered to me. He offered no explanation whatever for his failure to deliver these papers to me in Seattle, Wash., except as that set forth in his letter, a copy of which is included in the memorandum.

The papers enumerated in the other memorandum, which contains a letter from Mr. Pierce to myself, dated November 8, 1909, were delivered to me by messenger while in Seattle on that date, and no explanations have been made to me as to the whereabouts of these papers from the time I took charge of the Seattle division until they were delivered to me on the 8th, except as that set forth in the letter from District Law Officer Charles R. Pierce embodied in the memorandum. I have this date written Mr. Pierce, calling for further information, a copy of which letter is attached hereto.

This matter is submitted to you for your information.

Very respectfully,

Chief of Field Division.

On November 16 I wrote Mr. Schwartz as follows [reading]:

PORTLAND, OREGON, November 16, 1909.

Hon. H. H. SCHWARTZ,
Chief of Field Service, Washington, D. C.

SIR: I attach herewith copy of my letter of even date to Mr. Sheridan, which is self-explanatory. I also attach copy of my affidavit made this date concerning the disappearance of certain records, letters, and other papers in the office of the chief of field division, Seattle, Washington; also copy of the reply of Mr. Glavis to my letter to him of November 5, of which you have heretofore been furnished with a copy.

The statement made by Mr. Glavis in his letter is in conflict with statements made to me in the Beck Building on November 5, 1909. I know as a matter of fact that these copies were never turned over to me at Seattle, Washington, as you also know from the information you have secured. He also knows whether or not these papers were turned over to the Forest Service by him on September 18th, when he transmitted other important records to them without my knowledge or without the knowledge of anyone connected with the General Land Office. This shows the man's absolute disregard for the truth, and further indicates what reliance can be placed upon any statement he makes. It is absolutely useless for anyone to interview him alone. The only way in which anyone can talk to him safely is to have a stenographer present to take down the conversation.

Very respectfully,

Chief of Field Division.

On November 15 Mr. Sheridan wrote to me at Portland, Oreg., as follows [reading]:

Cunningham group.]

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Seattle, Wash., November 13, 1909.

Mr. ANDREW CHRISTENSEN,
Chief of Field Division, Portland, Oregon.

SIR: Please find inclosed blank affidavit containing eighteen interrogatories concerning the disappearance and loss of certain records, papers, and letters from the

files in the office of the Chief of Field Division, General Land Office, at Seattle, Washington. By commissioner's letter P-HHS, dated Washington, D. C., October 23, 1909, I have been directed to investigate this matter fully and to make recommendation, upon completion of said investigation, as to the proper person to be prosecuted, criminally, for the abstraction and purloining of a number of official documents which have disappeared from this office.

Similar affidavits have been executed by Miss Ella M. Shartell, of this office, by Mr. Sydney Stoner, of this office, and a blank affidavit has been forwarded to Mr. Baker, at Cheyenne, Wyoming, with instructions to have Mr. Spaulding execute it and then return it to me. It is desirable to have your affidavit setting out what you know about this matter, with a view to eliminating all innocent parties and fixing the guilt where it belongs. Any additional information, other than that required by the interrogatories herewith, which you can furnish to me in the nature of an additional affidavit, if necessary, will be greatly appreciated.

When all of these affidavits have been executed and are in my hands, then I shall make recommendation to the General Land Office as to the person who should be prosecuted in this connection. I desire to make this recommendation as soon as possible, and hence you will greatly oblige me if you can return this affidavit properly executed in the near future.

Very respectfully,

JAMES M. SHERIDAN,
Special Agent, G. L. O.

On November 16, 1909, I wrote Special Agent R. F. Maguire as follows:

PORTLAND, OREG., November 16, 1909.

Mr. R. F. MAGUIRE,
Special Agent, G. L. O.

SIR: Inclosed herewith are some questions concerning the missing letters in which I requested you to make affidavit some time ago. I have attached thereto a list of said missing letters. Kindly answer these questions, have your answers properly sworn to before a notary, and return to me as soon as practicable.

Very respectfully,

Chief of Field Division.

The CHAIRMAN. The letters you referred to there are those missing letters?

Mr. CHRISTENSEN. Yes, sir; those are the missing letters.

The CHAIRMAN. Those papers are admitted in evidence.

Mr. BRANDEIS. Have you got the inclosure that goes in this letter of the 16th?

Mr. CHRISTENSEN. No, I have not; that was attached to his affidavit.

Mr. VERTREES. Mr. Christensen, if you are tired, Mr. Finney will read.

Mr. FINNEY (reading):

PORTLAND, OREG., November 16, 1909.

Mr. A. BAKER,
Chief of Field Division, G. L. O., Cheyenne, Wyo.

SIR: I enclose herewith some stenographic notes taken from the note book of Special Agent Spaulding. These notes were dictated by Mr. Spaulding by Mr. Glavis, and relate to the records of the office when they were turned over to me last September, and are important in connection with an investigation that is now being made.

Will you please have Mr. Spaulding come into your office and have him transcribe these notes in your presence? It is desired that they are not delivered to Mr. Spaulding where they can be disposed of in any way by him. After they have been transcribed, please return them to me.

I would be pleased if you would give this your immediate attention.

Very respectfully,

Chief of Field Division.

Mr. FINNEY (reading):

PORTLAND, OREG., November 26, 1909

Mr. J. M. SHERIDAN,
Special Agent, G. L. O., Seattle, Wash.

SIR: I enclose herewith affidavit made by Special Agent Spaulding relative to the Glavis matter. Please have Greene or some one in the office make extra copies of this affidavit; also of the transcribed matter by Spaulding, in order that I may have a copy and so that you may have extra copies.

Very respectfully,

Chief of Field Division.

Mr. BRANDEIS. Mr. Christensen, have you that transcript referred to there?

Mr. CHRISTENSEN. Yes, sir.

Mr. BRANDEIS. You are going to introduce that, are you?

Mr. CHRISTENSEN. Yes, sir.

Mr. FINNEY (reading):

PORTLAND, OREGON, November 20, 1909.

Mr. JAMES M. SHERIDAN,
Special Agent, G. L. O.,
Seattle, Wash.

SIR: I transmit herewith affidavit made by Special Agent Maguire relative to the disappearance of the papers from the Juneau, Alaska, land office.

Please advise me when you expect to leave Seattle, as I desire to consult with you before you leave. I do not expect to reach Seattle until Tuesday or Wednesday morning.

Very respectfully,

Chief of Field Division.

Mr. VERTREES. I understand all of these are being admitted in the record?

The CHAIRMAN. Yes; they are all admitted.

Mr. CHRISTENSEN. Now, I have my letter to the United States attorney of November 30, 1909, in which I transmitted all the evidence that had been secured by Mr. Sheridan and Mr. Pugh in connection with this investigation, and this letter I wrote Mr. Todd.

Mr. BRANDEIS. Does that include these transcribed notes of Mr. Spaulding?

Mr. CHRISTENSEN. Yes, sir.

Mr. FINNEY (reading):

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
219 FEDERAL BUILDING,
Seattle, Wash., Nov. 30, 1909

Hon. E. E. TODD,
U. S. District Attorney, Seattle, Washington.

SIR: By direction of the Commissioner of the General Land Office I am herewith transmitting, for your inspection and consideration of their contents, the several papers and documents described in the annexed schedule, the purpose whereof is to enable you to determine whether they disclose facts of such evidential value as would warrant you in instituting an inquiry by the United States grand jury, next to be empaneled in this jurisdiction, concerning the wrongful abstraction and appropriation of certain records and papers belonging to the United States.

It is believed that the documents submitted to you, and particularly the statements numbered 1 and 2, together with the affidavit of Arthur R. Bowman (No. 3 in the schedule), will sufficiently apprise you as to the character and number of the papers alleged to have been unlawfully taken and appropriated, as well as concerning the place from and circumstances under which they were so taken. It is also believed that the facts therein stated will more or less clearly indicate the person to whom they circumstantially point as the one guilty of this violation of the law, namely, Mr. Louis R. Glavis, in whose official custody said papers existed at the time of their loss, and who never surrendered such custody to his successor in office, the writer hereof, all of

which is more or less manifest from the statements made in the affidavit of Arthur R. Bowman and the various items of the receipt executed to Mr. Glavis by myself (No. 4 in the schedule).

It is respectfully suggested that the offense which has been committed in respect to these missing papers, if any, is that defined in and by sections 47 and 48, chapter 4, of the act of Congress approved March 4, 1909, being an act for the codification, revision, and amendment of the penal laws of the United States, and that any prosecution which it may be found proper to institute should be so instituted under and in accordance with one or both of said sections.

I shall be pleased to confer with you concerning the subject-matter hereof at any time you may appoint for that purpose, and to do all in my power to aid you in the prosecution of any inquiry you may inaugurate.

Soliciting your early consideration and action herein, and awaiting your advice, I am,

Very respectfully, yours,

A. CHRISTENSEN,
Chief of Field Division.

The CHAIRMAN. What was the date of that Mr. Finney?

Mr. FINNEY. November 30, 1909. Attached to this is a paper headed "Schedule of documents transmitted to United States district attorney at Seattle, Wash., on November 30, 1909, by A. Christensen, chief of field division, with letter relative to propriety of grand jury investigation concerning wrongful abstraction and appropriation of records belonging to the United States."

Mr. VERTREES. I may state that we might, by reading the list, dispense, probably, with the reading of all the documents.

The CHAIRMAN. Yes; they can be printed, but there is no need of reading them now.

Mr. VERTREES. Just read the list of what they are, Mr. Finney.

(Mr. Finney reads list as follows:)

Schedule of documents transmitted to United States district attorney at Seattle, Washington, on November 30, 1909, by A. Christensen, Chief of Field Division, with letter relative to propriety of grand jury investigation concerning wrongful abstraction and appropriation of records belonging to the United States.

(1) Memorandum relative to loss of twenty-one letters obtained by Special Agent Bowman from the United States district land office at Juneau, Alaska, and by him brought to and left in the office of the chief of field division at Seattle, Washington.

(2) Memorandum relative to loss and subsequent reappearance of a document constituting a part of the evidence secured in the course of the governmental investigation concerning the validity of the so-called "Cunningham group" of coal-land claims in Alaska, being in the form of a circular letter addressed by Clarence Cunningham to "Dear sir," dated October 20, 1905, and relating to the progress of development work on and exploration of the above-mentioned coal claims.

(3) Letter and affidavit of Arthur R. Bowman, special agent in the service of the General Land Office, relative to his possession and disposition of the letters referred to in Item No. 1 of this schedule.

(4) Copy of letter from A. Christensen, chief of field division, Seattle, Wash., dated September 20, 1909, to Louis R. Glavis, former chief of said field division, specifying letters obtained by Special Agent Bowman from the United States district land office at Juneau, Alaska, which had not been received by said Christensen from said Glavis, with the other records and papers pertaining to the files of the field division.

(5) Memorandum relative to absence from the files in the office of the chief of field division at Seattle, Wash., of two carbon copies of a document prepared by Mr. Glavis while chief of said field division, on August 15, 1909, being a report to the President of the United States in relation to the Cunningham coal-land claims. Said memorandum is accompanied by certified copies of an account and annexed vouchers evidencing payment by the United States of the cost of preparation of said document.

(6) Telegram from the register and receiver in charge of the United States district land office at Juneau, Alaska, dated November 24, 1909, and addressed to James M. Sheridan, stating that none of the letters delivered by them to Special Agent Bowman on August 6, 1909, had been returned to that office.

(7) Affidavit of Andrew Christensen, chief of field division, Portland, Oregon, subscribed and sworn to November 16, 1909, before Herman Baumhold, a notary public in and for Multnomah County, Oregon, relative to loss of the letters hereinabove mentioned. Said affidavit is accompanied by the affiant's letter of transmittal, dated November 16, 1909; by a carbon copy of a letter written by the said affiant to H. H. Schwartz, chief of field service, Washington, D. C., under date of November 5, 1909; by a carbon copy of a letter written by said affiant to Louis R. Glavis, former chief of field division at Seattle, Wash., dated November 5, 1909; by a carbon copy of a second letter written by said affiant to the said Glavis on the same date; by a carbon copy of a letter received by said affiant from said L. R. Glavis, and dated Portland, Oregon, November 15, 1909; and by a list of letters and papers alleged to have been unlawfully taken by L. R. Glavis from the files in the office of the chief of field division at Seattle, Wash., referred to in the above-mentioned affidavit and identified as "Exhibit A."

(8) Affidavit of Sidney N. Stoner, of Seattle, Wash., relative to disappearance and loss of records, papers, and letters from the files in the office of the chief of field division in Seattle, Wash.

(9) Affidavit of Robert F. Maguire, of Portland, Ore., relative to disappearance and loss of records, papers, and letters from the files in the office of the chief of field division in Seattle, Wash.

(10) Affidavit of Ella M. Shartell, of Seattle, Wash., relative to disappearance and loss of records, papers, and letters from the files in the office of the chief of field division in Seattle, Wash., accompanied by two letters written by said affiant to James M. Sheridan under dates of October 29 and November 12, 1909, in respect of the same subject.

(11) Affidavit of Frank L. Spaulding, Cheyenne, Wyoming, relative to disappearance and loss of records, papers, and letters from the files in the office of the chief of field division in Seattle, Wash., said affidavit being accompanied by a letter of transmittal written by A. Baker, chief of field division, Cheyenne, Wyoming, and bearing date November 23, 1909.

(12) Another affidavit of Frank L. Spaulding, Cheyenne, Wyo., relative to disappearance and loss of records, papers, and letters from the files in the office of the chief of field division in Seattle, Wash., subscribed and sworn to November 23, 1909. This affidavit is accompanied by original stenographic notes of matter dictated to said Spaulding by L. R. Glavis, the transcript of which is attached; also by letters of transmittal from A. Baker, chief of field division, Cheyenne, Wyo., of date November 23, 1909, and from A. Christensen, chief of field division, Portland, Ore., of date November 28, 1909.

(13) Letter from S. N. Stoner, special agent of the General Land Office, dated Seattle, Wash., November 1, 1909, to Mr. A. Christensen, chief of field division, in the matter of visits made by said Stoner, with Mr. Glavis, to the latter's room in the Lincoln Hotel in the city of Seattle, Wash., and concerning Mr. Glavis's possession there of various papers and records belonging to the United States and which had been by him kept there in association with papers of a personal and private character.

Senator SUTHERLAND. There are some of those papers, Mr. Vertrees, that are already in?

Mr. VERTREES. Yes; I was just going to ask that question. I think so, but I wish this paper to go in.

(The papers are as follows:)

MEMORANDUM.

SEATTLE, WASHINGTON, November 23, 1909.

In connection with the twenty-one papers still missing from the papers obtained by Special Agent Bowman from the Juneau land office on August 6, 1909, as set out in Bowman's receipt on file in this office, the following appears concerning their whereabouts:

These papers were obtained, with other papers set out in Bowman's receipt, from the register and receiver of the Juneau, Alaska, land office on August 6, 1909, and brought to Seattle and left in the office at No. 219 federal building by said Bowman about August 10, 1909, when he returned from Alaska. On September 20, 1909, Mr. Christensen, chief of field division, dictated a letter, dated Seattle, Washington, September 20, 1909, and addressed to Mr. L. R. Glavis, Lincoln Hotel, Seattle, Washington, wherein he set out a list of letters obtained by Special Agent Bowman from the Juneau, Alaska, land office, as shown by Bowman's receipt to said land office dated August 6, 1909, and which were found to be missing from the files of Mr. Christensen's office at the time that he was receipting to Mr. Glavis for all official papers.

herein. Amongst these letters was that from Clarence Cunningham to the register and receiver at Juneau, Alaska, bearing date January 15, 1908, and which was returned to Mr. Spaulding in this office, in the presence of Mr. Christensen, by Mr. Glavis on September 20, 1909. Hence it is logical to assume that if Mr. Glavis got this one paper out of Bowman's grip, the other twenty-one which are noted as missing on the list herewith were also taken out of said grip by Glavis, but were not returned to him, as they cannot be found anywhere among the files, nor does anyone connected with the office know of their whereabouts.

J. M. SHERIDAN.

MEMORANDUM.

SEATTLE, WASHINGTON, *November 23, 1909.*

A letter from Clarence Cunningham to the register and receiver of the United States land office at Juneau, Alaska, dated January 15, 1908, on letter head of "The Rainier-Grand Hotel," Seattle, Washington.

In this letter Cunningham says, among other things:

"The commissioner has furnished us with copies of all of the correspondence and telegrams relating to our entries between the various special agents and also with our office. Up to date everything seems to be approved by each special and department chief. So now our only delay will be occasioned through failure to receive same, according to Judge Ballinger's advice."

This letter is receipted for by Special Agent Bowman to the Juneau, Alaska, land office in a receipt bearing date Juneau, Alaska, August 6, 1909, and is therein described "1-15-1908, Clarence Cunningham," and the heading of said receipt reads: "I have this day received from the United States land office at this place the following letters addressed to the office on the following dates by the following persons."

In Mr. Bowman's affidavit, bearing date Seattle, Washington, November 12, 1909, and executed before Philip Tindall, a notary public in and for the State of Washington, Mr. Bowman says, among other things, that he does not recall the full contents of any of said letters appearing to have been written by Clarence Cunningham, but remembers that he advised Mr. Glavis, in the communication addressed to him concerning said letters as aforesaid, that one of the Cunningham letters advised the register and receiver that they (meaning the several claimants of the entries constituting the Cunningham group) had been shown all special agents' reports relative to the Cunningham claims.

And in a letter dated Seattle, Washington, November 3, 1909, from Special Agent Arthur R. Bowman to James M. Sheridan, in response to a question propounded by Mr. Sheridan, Mr. Bowman states:

"I remember distinctly of calling his attention particularly to two letters, one from Cunningham to the register and receiver, in which he stated that all of the parts of the special agents had been shown him at Washington." * * *

These two references from the affidavit and letter of Special Agent Bowman, above referred to, sufficiently identify this communication as that herein described as written from Clarence Cunningham to the register and receiver on January 15, 1908, from the Rainier-Grand Hotel at Seattle, Washington, and the paragraph of which herein quoted wherein Cunningham states that the commissioner has furnished copies of all correspondence and telegrams to the Cunningham entrymen, et cetera. About 9 a. m. on the morning of September 20, 1909, Mr. Glavis came to the office of the chief of field division at No. 219 Federal Building, Seattle, Washington, and delivered this same letter from Cunningham to the register and receiver at Juneau, Alaska, dated Seattle, Washington, January 15, 1908, to Mr. Spaulding, then an employe in this office; this as a result of Mr. Christensen's threat to prosecute him if he did not deliver to Mr. Christensen government papers wrongfully in his possession, since Mr. Glavis was no longer a member of the service.

Hence the following steps are shown concerning the whereabouts of this paper: On August 6, 1909, it was obtained from the register and receiver's office at Juneau, Alaska, by Special Agent Bowman; on or about August 10, 1909, Bowman arrived in Seattle, Washington, from Juneau, Alaska, and left said letter in the office of the chief of field division, No. 219 Federal Building, Seattle, Washington, in a grip in which he carried papers from Alaska to Seattle; thereafter, and on a date not known, Bowman notified Glavis that he had such a letter. About the first day of September, 1909, Mr. Glavis returned to No. 219 Federal Building, Seattle, Washington, from the East, after Bowman had written to him advising him of the presence of this letter in said office at No. 219 Federal Building. On September 20, 1909, Glavis delivered this letter personally into the hands of Mr. Spaulding at No. 219 Federal Building,

Seattle, Washington, in the presence of Mr. Christensen, together with other official letters. In the article appearing in Collier's Weekly, Glavis makes public charges against Mr. Ballinger, in which information is set out which could have been obtained from this letter only.

J. M. SHERIDAN

MEMORANDUM.

SEATTLE, WASHINGTON.

November 23, 1909

In the matter of the disappearance and reappearance of a circular issued by Clarence Cunningham, as agent for the Cunningham group, dated October 20, 1905, which is now an exhibit in the Government's testimony in the inquiry into the validity of the Cunningham coal cases:

This paper was set out in a receipt dictated by L. R. Glavis which accompanied his letter to Mr. Sheridan, dated Seattle, Washington, July 19, 1909, in the following manner: Under the head of "Exhibits in Cunningham group" this entry reads: "October 20, 1905; circular signed by Clarence Cunningham relative to securing patents to claims," and this letter was found by Mr. Sheridan to be amongst those turned over to him by Glavis and for which Mr. Sheridan signed a receipt on July 23, 1909, while he was in Seattle, Washington, this being the first visit he made to Seattle in connection with the Cunningham case.

Mr. Sheridan returned to Seattle in August, 1909, having been in Denver, Colorado, in the intervening time from July, 1909. Upon the occasion of this second trip Mr. Sheridan checked off the Cunningham papers which he found on file in the office. Mr. Glavis being absent, and found this circular of October 20, 1905, to be missing, as is shown by the fact that the inside checks are not set opposite this paper on the receipt dictated by Glavis, while they are set opposite all papers which were found to be present on the occasion of this second visit. Nothing further could be learned of this letter until the morning of October 19, 1909, when Mr. A. C. Shaw, assistant law officer of the Forest Service, delivered a package of papers to Mr. Sheridan at his office, No. 219 Federal Building, Seattle, Washington, in the presence of Mr. Pierce and Mr. Pugh. Mr. Sheridan made a memorandum on the exterior of said envelope at the time and in the presence of Mr. Shaw, and which Mr. Shaw approved when made, which read as follows:

"Originals, principally, enclosed with copies of some of the papers in the Cunningham coal cases, Alaska, by Mr. Glavis to Forest Service, all delivered to Forest Service by Mr. Glavis at one time. Mr. Shaw does not know that the Forest Service still has copies of these papers, though the Forest Service may have them. Mr. Shaw has one other letter, which he will bring later.

"JAMES M. SHERIDAN

"Additional letter above referred to was this date delivered to me.

"J. M. S.

10-19-09

"Oct. 19, 1909."

On October 21, 1909, Mr. Sheridan dictated a receipt setting out each and every paper which had been enclosed by Mr. Shaw in the envelope bearing the memorandum above set out, in which this circular is set out as follows:

"3. Circular by Clarence Cunningham, addressed to "Dear Sir," dated Seattle, Washington, October 20, 1905, which begins: 'Since our meeting held in Spokane June 20th. at which time it was decided to send an expert to examine our coal lands in Alaska, a committee was appointed, constituted of Miles C. Moore, H. C. Henry, G. J. Smith, and Frederick Burbidge, to select a suitable man, and Mr. H. L. Hawkins was decided upon to make the examination, I have to report as follows,' * * * This circular consists of seven typewritten pages, legal size, with blue back, and gives in every detail of the examination made by Mr. Hawkins and the result thereof and winds up by setting out receipts and disbursements and a trial balance, et cetera. It bears a manuscript memorandum, which reads as follows: 'Checked and compared by us from the original paper now in the possession of F. F. Johnson, of Walla Walla, Idaho, this 4th day of March, 1908.'

"H. T. JONES, Special Agent.

"L. R. GLAVIS, Chief of Field Division."

Hence the following facts appear in connection with the whereabouts of this paper: On July 25, 1909, Mr. Sheridan found it amongst the Cunningham papers; on August 19, 1909, Mr. Sheridan found that it was missing from the Cunningham papers; on October 19, 1909, Mr. A. C. Shaw, of the Forest Service, delivered said paper into the hands of Mr. Sheridan at No. 219 Federal Building, Seattle, Washington.

J. M. SHERIDAN.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Seattle, Washington, November 3, 1909.

JAMES M. SHERIDAN,
Attorney for the Government, Seattle, Washington.

MR: Am in receipt of your letter of the 2nd inst. in which you state that some twenty-separate and distinct communications for which I receipted at the Juneau, Alaska, land office on August 6, 1909, are now missing from the records or at least cannot be stated among the records in the office of the chief of field division at Room 219 Federal Bldg., Seattle, Washington.

In answer to the questions propounded have to say in reply as follows:

Q. (a) "When did you arrive at Seattle, Washington, from Alaska with these papers?"

A. "My daily report will show the day and hour that I arrived at Seattle on the *American Cottage City*. I think it was on August 10, 1909, about 3 p. m. My report for the month of August is not now available, as I mailed it from Duluth a few days ago and it has not as yet reached the office here.

Q. (b) "When you left them in your grip in the office of the chief of field division, No. 219 Federal Bldg., Seattle, Washington, upon your return from Alaska, was your grip locked?"

A. "No.

Q. (c) "Have you a copy of the letter which you informed Mr. Colter that you wrote Mr. Glavis stating that you had left these papers in your grip at No. 219 Federal Building, Seattle, Washington?"

A. "No. The letter was written from Chicago, Ill., as I recall, and was written out in ink and no copy of it was made or kept by me.

Q. (d) "If you have not a copy of this letter, do you recall its contents, and what they were?"

A. "On or about the 29th day of August, 1909, Mr. Glavis left an assignment of the case which he wished me to investigate while on my recent trip east for me at the Great Northern Hotel, at Chicago, Ill., and with this assignment left a letter of instructions as to the order in which he wished the investigations to be made, etc., and requested that I write him immediately on receipt of the same as to just how I would proceed with the investigation in order to make sure that I clearly understood his letter of instructions. Accordingly on my arrival in Chicago on the 30th, I think, I wrote a letter as above requested to Mr. Glavis telling him my plans for the investigations to be made by me and also told him about the results of my investigations of the Wells and Smith Groups while on my recent trip to Alaska and informed him that all the evidence in these cases had been collected and arranged all ready for report, and that this evidence had all been left by me in my grip in the office, in which also had left the letters which I had secured from the Juneau land office, together with carbon copy of the receipt which I had given the register and receiver of the Juneau, Alaska, land office for them. I also requested, either in this letter or one shortly thereafter, that he, Mr. Glavis, go through all of the letters receipted for by me, check them off, and give me a receipt for the same. However, no receipt has ever been received by me. On my return to Seattle, Wash., on Nov. 2, 1909, I went carefully through my grip and found no papers, letters, or data of any description, as you know, you were present at the time I arrived at the office and first went through the papers in my grip. At the same time you also informed me that at the time of taking charge of the office and receipting for the papers to Mr. Glavis, that Mr. Christensen and his assistants went through the papers in my grip and took out all of the data therein contained. No one else has had anything to do with these papers, so far as I know, except the persons above mentioned.

Q. (e) "Did you send the missing papers or any of them to Mr. Glavis at any time since your return from Alaska?"

A. "No.

Q. (f) "Did you inform Mr. Glavis of the contents of these letters that are herein stated as missing?"

A. I remember distinctly of calling his attention particularly to two letters, one from Cunningham to the register and receiver in which he stated that all of the reports of the special agents had been shown him at Washington, and another from M. A. Green to the register of the Juneau office, inclosing a check for \$25 to pay certain filing fees with instructions to keep the rest for his (Dudley's) own use. There were one or two others which I also considered of some importance, and it is possible that I have called his attention to these also. I do not recall the dates these letters were written, and as they have all been filed away with the various cases, and some of the letters have been sent to other Chief of Field Divisions, I can not state whether these particular letters are among the missing or not.

Q. (g) "Have you, directly or indirectly, aided anyone in extracting, purloining or concealing the letters herein set out as missing, and do you know of their present whereabouts?"

A. I have not, and know nothing about the whereabouts of the letters listed as missing.

Q. (h) "Are you ready and willing to make an affidavit in support of the statement which you shall make to the interrogatories herein set out?"

A. I am.

This, I believe, answers all of the questions set out in your letter, and contains full statement of all of the facts as to my connection, directly or indirectly, with the missing papers. If there is anything further that you desire me to do, I will be glad to assist you in any way possible to locate the missing data.

Very respectfully,

ARTHUR R. BOWMAN,
Special Agent, G. L. O.

AFFIDAVIT OF ARTHUR R. BOWMAN RELATIVE TO DISAPPEARANCE AND LOSS OF CERTAIN PAPERS BELONGING TO THE FILES IN THE OFFICE OF THE CHIEF OF FIELD DIVISION OF THE GENERAL LAND OFFICE AT SEATTLE, WASHINGTON, AND OTHER PAPERS.

STATE OF WASHINGTON, *County of King, sctd.:*

The affiant, Arthur R. Bowman, being first duly sworn, upon his said oath does depose and state that he is twenty-seven years of age, resides in Seattle, State of Washington, and is employed and serving as a timber cruiser in the service of the United States General Land Office, under the direction of the chief of the eighth field division of that office, with his headquarters at Duluth, in the State of Minnesota; that during the months of July and August, in the year 1909, he was employed in the same service and capacity, under the direction of the chief of the seventeenth field division, with his office at Seattle, in the State of Washington, the position of chief of said field division at that time being held by Mr. Louis R. Glavis; that on or about August 10, 1909, affiant arrived at Seattle on his return from an official journey to Juneau and other points in the Territory of Alaska, in the course of which journey he was a visitor to the United States district land office in said town of Juneau, in said Territory of Alaska; that on the occasion of said visit to said office he secured from the officials in charge thereof certain written communications which had been addressed to and received by them from various persons, all of which said communications related to pending locations of and claims to coal lands in said land district; that nine of said communications were, apparently, written by one Clarence Cunningham, one of the claimants, and attorney in fact for a number of other claimants of and under coal land entries numbers one to thirty-three, both inclusive, commonly known as "the Cunningham group" of claims, covering lands in the land district aforesaid. Affiant here refers to a typewritten receipt for said correspondence, to him signed and delivered to the register and receiver at Juneau, Alaska, bearing date of August 6, 1909, and a duplicate of which is now on file in the office of the chief field division in Seattle; and he makes an examined and authenticated copy of the receipt a part of this affidavit, marked "Exhibit A: Affidavit of Arthur R. Bowman."

Further deposing herein, affiant says that all of the writings mentioned and described in the receipt above referred to were by him placed in a small leather field satchel and therein carried by him to Seattle, Washington, where said satchel was deposited in the room occupied by the then chief of field division, Mr. Louis R. Glavis, as his office, being room number 217 in the United States Government building in said city; that the said satchel then contained all of said several letters and writings received by him from the register and receiver at Juneau, and when affiant departed from Seattle, on or about the twenty-fifth day of August, 1909, said satchel remained in the place where it had been so deposited by him, still holding and containing.

ant believes, each and every one of said letters and writings; that on or about the twentieth day of August, 1909, being at that time in the city of Chicago, in the State of Illinois, affiant addressed a written communication to his official superior, Mr. Louis R. Glavis, chief of field division, as aforesaid, which communication he duly deposited in the United States mails for delivery to the addressee in the city of Seattle, in the State of Washington; in that letter he (affiant) advised Mr. Glavis concerning the result of certain inquiries made by him while in Alaska, as, also, that the evidence secured by him pertaining to and affecting the validity of various coal land claims in that Territory, then under investigation, had been left in affiant's satchel, in his (affiant's) office in Seattle, Washington; that in that communication, or in one written to him very soon thereafter, affiant suggested to Mr. Glavis that he examine the letters and papers in affiant's said satchel, compare them with the receipt given to the register and receiver at Juneau, a copy of which would be found with said letters, and send affiant his (Glavis') receipt therefor; that no receipt for said letters, signed by Mr. Glavis, or any other person, has ever been delivered to or received by affiant; that affiant does not recall the full contents of any of said letters appearing to have been written by Clarence Cunningham, but does remember that he advised Mr. Glavis, in the communication addressed to him concerning said letters, as aforesaid, that one of the Cunningham letters advised the register and receiver that they (meaning the several claimants of the entries constituting the Cunningham group) had been shown all special reports relative to the Cunningham claims.

Affiant further deposes, says that on his return to Seattle on November 2, 1909, he once carefully examined the contents of his above-mentioned satchel, finding that some of the official papers and letters which he had placed therein had been, by some person unknown to affiant, removed therefrom; that he was advised by Mr. James M. Sheridan that Mr. Andrew Christensen, now chief of the seventeenth field division, had secured from said satchel certain of the papers and letters formerly contained therein, but that some portion thereof, to wit, twenty-two letters, including (all of) those purporting to have been written by Clarence Cunningham, had been found to be absent and missing.

The affiant now says that he never transmitted or delivered said letters, or any of them, to any person or persons whomsoever, except as delivery may be inferred from a communication made by him to Mr. Glavis, under date of August 30, 1909, to which reference has been previously made; that he has never aided any person or persons whomsoever in the extraction, removal, concealment, or wrongful detention or suppression of any of said letters, and has no knowledge or information whatever concerning their present place of custody, or the name or names of the person or persons in whose possession they may now be; that affiant has never seen, or had opportunity to see any of said letters since the date on which he last saw them in his satchel in the office of the chief of field division at Seattle as aforesaid, except as hereafter stated, and that he has not now in his possession or under his control any of said letters; that while present in the office of the chief of field division at Duluth, Minnesota, on or about the twenty-seventh day of October, 1909, affiant's attention was drawn by a clerk in said office directed to the fact that there had been received in said office from Mr. Andrew Christensen, chief of field division at Seattle, some of the letters which he (affiant) had secured at Juneau as aforesaid, said letters having been transmitted to Mr. Colter because of their supposed relation to coal land entries made by a person or persons residing in the territory of the Duluth field division; that affiant did not examine said letters, except as his attention was directed to some two or three of them, the particular letters to which his attention was so invited having been, apparently, written by one Than Kelley and one Laberee; that affiant was advised that a list and catalogue of and receipt for the letters and papers so received by the chief of field division at Duluth had been or was being prepared; that he has been shown a communication from Mr. S. J. Colter, chief of field division at Duluth, to Mr. Andrew Christensen, chief of field division at Seattle, said letter being dated at Duluth, Minnesota, on October 29, 1909, and appearing to have been written for the purpose of transmitting a list of the letters and papers received by the register from the addressee; that affiant has examined said list, which, with the letter transmitting it, is on file in the office of the chief of field division at Seattle, and has examined and compared with said list a letter written by Mr. Christensen to Mr. Colter, bearing date at Seattle, Washington, October 19, 1909, transmitting to Mr. Colter a number of letters and papers therein listed and described by names of writers and dates; that such examination and comparison of said lists discloses them to correspond one with the other, except that the list prepared by Mr. Colter specifies four letters not listed by Mr. Christensen, and it further appears from said lists that none of the letters secured by affiant from the register and receiver at Juneau, Alaska,

2736 INVESTIGATION INTERIOR DEPT. AND BUREAU OF FORESTRY.

purporting to have been written by Clarence Cunningham and relating and pertaining to the Cunningham group of entries, are mentioned and described in either of said lists.

And further affiant testifieth not.

ARTHUR R. BOWMAN.

Subscribed and sworn to before me by Arthur R. Bowman this the 12th day of November, 1909.
[SEAL.]

PHILIP TINDALL,
Notary Public.

My commission expires Oct. 13, 1913.

EXHIBIT A.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE.
Seattle, Wash., September 20, 1909.

Mr. LOUIS R. GLAVIS,
Lincoln Hotel, Seattle, Washington.

SIR: In the list of letters received by Special Agent Arthur R. Bowman, from the land office at Juneau, Alaska, the following letters are missing:

12-31-06. Wendell McLaughlin.	9-26-07. Clarence Cunningham.
8-24-07. Archie W. Shields.	12-11-07. Clarence Cunningham.
11-8-07. A. N. Wheatley.	6-3-08. James D. Finch.
12-23-07. W. S. Yearsley.	3-10-08. Clarence Cunningham.
5-9-08. Clarence Cunningham.	5-23-08. Wm. Sulzer.
3-19-08. Clarence Cunningham.	4-13-08. Clarence Cunningham.
4-3-08. Frank Watson.	3-12-08. H. R. Harriman.
3-14-08. Clarence Cunningham.	1-9-08. Clarence Cunningham (telegram).
1-7-08. Arthur D. Jones.	1-4-08. A. N. Wheatley.
1-15-08. Clarence Cunningham.	4-19-09. Walter M. French.
12-23-08. R. A. Ballinger.	1-17-09. M. A. Green.
4-23-08. M. A. Green.	
8-3-07. Thos. Payne.	

I respectfully request that you advise me, if possible, what disposition was made of them and where they can be found.

Very respectfully,

(Signed) A. CHRISTENSEN,
Chief of Field Division.

A true copy of the original.

A. CHRISTENSEN

MEMORANDUM.

SEATTLE, WASH., November 23, 1909.

On August 15, 1909, Mr. Glavis paid to a Lorene Sheetz, of Chicago, Ill., \$55, which is subvoucher No. 2 of his expense account for the month of August, 1909, for 96 pages of copy with two carbons, and 51 pages dictated, with two carbons. Mr. Glavis stated to Mr. Christensen about 11 a. m., November 5, 1909, that the copies and dictation mentioned in said subvoucher No. 2 was a copy of his report to the President concerning the Cunningham coal cases. Mr. Christensen then and there made personal demand on him for the carbon copies of said report, but Mr. Glavis was unable to produce them. He requested Mr. Christensen to write him, when he would make reply to certain questions. Mr. Christensen then wrote him on November 5, 1909, making a formal demand upon him for the carbon copies of said report. Mr. Glavis replied, on November 15, 1909, stating as follows:

"Replying to your two letters dated November 5th, in reference to the two carbon copies of my report to the President, you are advised that I have no such copies and that the same are either in your possession or are among the papers I furnished the Forest Service for their assistance in the trial in the coal cases."

These copies are not in the office of the Chief of Field Division at Seattle, Washington, nor are they now—and have never been—in the possession of Mr. Christensen or any clerk connected with the General Land Office.

On September 18, 1909, Mr. Christensen asked Mr. Glavis whether or not he had any papers belonging to the files of the Chief of Field Division or to the files of the General Land Office in his possession, and was advised by Mr. Glavis that he had no such papers. Mr. Glavis was asked the same question on Monday, September 20, 1909, and he gave the same reply. On November 5, 1909, Mr. Glavis handed to Mr. Christensen a large number of papers which were properly part of the files of the office of the 1st and 17th field divisions, accompanied by the following letter:

"In looking through my personal letter files I discovered some letters and copies of letters that might be considered semiofficial, and I therefore deliver them to you."

On November 8, 1909, a messenger from the Forest Service delivered to Mr. Christensen, in the office of the Chief of Field Division at Seattle, Washington, a number of papers which properly belonged to files of the 1st and 17th field divisions of the General Land Office, which letters were accompanied by a letter from Mr. Charles R. Pierce, district law officer, Forest Service, stating as follows:

"I inclose some copies of original letters which were among some typewritten copies of letters transmitted to the Forest Service by Mr. Glavis on September 18th."

On November 10th, 1909, Mr. Christensen wrote Mr. Pierce asking him to advise him to what source the papers delivered on November 8th were received by him, to which Mr. Pierce replied on November 14th, as follows:

"Mr. Shaw's letter of October 25th to Special Agent Sheridan replies fully to certain inquiries of similar character to yours, propounded to him by Mr. Sheridan. The originals I returned to you were inadvertently overlooked by Mr. Shaw and myself at the time the first few were sorted out and returned to you. So far as I am aware the Forest Service has no more original letters or original documents of any character among the carbons delivered by Mr. Glavis to this service."

A. CHRISTENSEN.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Portland, Oreg., November 16, 1909.

Mr J. M. SHERIDAN,
Special Agent, G. L. O., Seattle, Wash.

SIR: I am transmitting herewith the original vouchers No. 2 and 3 of the expense account of Louis R. Glavis for the month of August, 1909, also pencil notes of his said account. Please place these with the other papers belonging to his accounts, unless you desire to use them in the possible criminal prosecution.

I am also enclosing photographic copies of said vouchers and accounts for use in any possible criminal prosecution. These photographic copies have been furnished me by the General Land Office. I have retained one photographic copy here.

Very respectfully,

A. CHRISTENSEN, Chief of Field Division.

Aug 4.	N. P. Ry. Co., fare, Portland, Ore., to Seattle, Wash.....	\$5. 60
	N. P. Ry. Co., sleeper, Portland, Ore., to Seattle, Wash.....	2. 00
	Transfer baggage, hotel to depot, Portland, Ore.....	. 50
	Bus fare, hotel to depot, Portland, Ore.....	. 25
5.	Fee to porter on sleeper.....	. 25
	Transfer baggage, depot to hotel, Seattle, Wash.....	. 25
6.	N. P. Ry. Co., sleeper, Seattle to Spokane, Wash.....	2. 50
	Transfer baggage, hotel to depot, Seattle, Wash.....	. 50
7	To Amies Flexner, Portland, Ore., for.....	5. 60
	Fee to porter on sleeper.....	. 25
	Transfer baggage, depot to hotel, Spokane.....	. 50
10	Transfer baggage, hotel to depot, Spokane.....	. 50
	N. P. Ry. Co., sleeper, Spokane, Wash., to St. Paul, Minn.....	9. 50
11	Fee to porter on sleeper.....	. 25
12	Fee to porter on sleeper.....	. 25
13.	Fee to porter on sleeper.....	. 25
	Pullman parlor car fare, St. Paul, Minn., to Chicago, Ill.....	1. 25
	Bus fare, depot to hotel, Chicago.....	. 50
	Transfer baggage, depot to hotel, Chicago.....	. 50
15	Bus fare, hotel to depot, Chicago.....	. 50
	Transfer baggage, hotel to depot, Chicago.....	. 50
	To Lorene Sheetz, Chicago, Ill., for typewriting 146 pages & 2 carbon copies, at \$55.00 per job (voucher 1).....	55. 00

2736 INVESTIGATION INTERIOR DEPT. AND BUREAU OF FORESTRY.

purporting to have been written by Clarence Cunningham and relating and pertaining to the Cunningham group of entries, are mentioned and described in either of said lists.

And further affiant testifieth not.

ARTHUR R. BOWMAN.

Subscribed and sworn to before me by Arthur R. Bowman this the 12th day of November, 1909.

[SEAL.]

PHILIP TINDALL,
Notary Public.

My commission expires Oct. 13, 1913.

EXHIBIT A.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Seattle, Wash., September 20, 1909.

Mr. LOUIS R. GLAVIS,
Lincoln Hotel, Seattle, Washington.

SIR: In the list of letters received by Special Agent Arthur R. Bowman, from the land office at Juneau, Alaska, the following letters are missing:

12-31-06. Wendell McLaughlin.
8-24-07. Archie W. Shields.
11-8-07. A. N. Wheatley.
12-23-07. W. S. Yearsley.
5-9-08. Clarence Cunningham.
3-19-08. Clarence Cunningham.
4-3-08. Frank Watson.
3-14-08. Clarence Cunningham.
1-7-08. Arthur D. Jones.
1-15-08. Clarence Cunningham.
12-23-08. R. A. Ballinger.
4-23-08. M. A. Green.
8-3-07. Thos. Payne.

9-26-07. Clarence Cunningham.
12-11-07. Clarence Cunningham.
6-3-08. James D. Finch.
3-10-08. Clarence Cunningham.
5-23-08. Wm. Sulzer.
4-13-08. Clarence Cunningham.
3-12-08. H. R. Harriman.
1-9-08. Clarence Cunningham (telegram).
1-4-08. A. N. Wheatley.
4-19-09. Walter M. French.
1-17-09. M. A. Green.

I respectfully request that you advise me, if possible, what disposition was made of them and where they can be found.

Very respectfully,

(Signed)

A. CHRISTENSEN,
Chief of Field Division.

A true copy of the original.

A. CHRISTENSEN

MEMORANDUM.

SEATTLE, WASH., November 23, 1909.

On August 15, 1909, Mr. Glavis paid to a Lorene Sheetz, of Chicago, Ill., \$55, which is subvoucher No. 2 of his expense account for the month of August, 1909, for 96 pages of copy with two carbons, and 51 pages dictated, with two carbons. Mr. Glavis stated to Mr. Christensen about 11 a. m., November 5, 1909, that the copies and dictation mentioned in said subvoucher No. 2 was a copy of his report to the President concerning the Cunningham coal cases. Mr. Christensen then and there made personal demand on him for the carbon copies of said report, but Mr. Glavis was unable to produce them. He requested Mr. Christensen to write him, when he would make reply to certain questions. Mr. Christensen then wrote him on November 5, 1909, making a formal demand upon him for the carbon copies of said report. Mr. Glavis replied, on November 15, 1909, stating as follows:

"Replying to your two letters dated November 5th, in reference to the two carbon copies of my report to the President, you are advised that I have no such copies and that the same are either in your possession or are among the papers I furnished the Forest Service for their assistance in the trial in the coal cases."

These copies are not in the office of the Chief of Field Division at Seattle, Washington, nor are they now—and have never been—in the possession of Mr. Christensen or any clerk connected with the General Land Office.

On September 18, 1909, Mr. Christensen asked Mr. Glavis whether or not he had any papers belonging to the files of the Chief of Field Division or to the files of the General Land Office in his possession, and was advised by Mr. Glavis that he had no such papers. Mr. Glavis was asked the same question on Monday, September 20, 1909, and he gave the same reply. On November 5, 1909, Mr. Glavis handed to Mr. Christensen a large number of papers which were properly part of the files of the office of the 1st and 17th field divisions, accompanied by the following letter:

"In looking through my personal letter files I discovered some letters and copies of letters that might be considered semiofficial, and I therefore deliver them to you."

On November 8, 1909, a messenger from the Forest Service delivered to Mr. Christensen, in the office of the Chief of Field Division at Seattle, Washington, a number of papers which properly belonged to files of the 1st and 17th field divisions of the General Land Office, which letters were accompanied by a letter from Mr. Charles R. Pierce, district law officer, Forest Service, stating as follows:

"I inclose some copies of original letters which were among some typewritten copies of letters transmitted to the Forest Service by Mr. Glavis on September 18th."

On November 10th, 1909, Mr. Christensen wrote Mr. Pierce asking him to advise him what source the papers delivered on November 8th were received by him, to which Mr. Pierce replied on November 14th, as follows:

"Mr. Shaw's letter of October 25th to Special Agent Sheridan replies fully to certain inquiries of similar character to yours, propounded to him by Mr. Sheridan. The originals I returned to you were inadvertently overlooked by Mr. Shaw and myself at the time the first few were sorted out and returned to you. So far as I am aware the Forest Service has no more original letters or original documents of any character among the carbons delivered by Mr. Glavis to this service."

A. CHRISTENSEN.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Portland, Oreg., November 16, 1909.

Mr. J. M. SHERIDAN,
Special Agent, G. L. O., Seattle, Wash.

SIR: I am transmitting herewith the original vouchers No. 2 and 3 of the expense account of Louis R. Glavis for the month of August, 1909, also pencil notes of his said account. Please place these with the other papers belonging to his accounts, unless you desire to use them in the possible criminal prosecution.

I am also enclosing photographic copies of said vouchers and accounts for use in any possible criminal prosecution. These photographic copies have been furnished me by the General Land Office. I have retained one photographic copy here.

Very respectfully,

A. CHRISTENSEN, Chief of Field Division.

Aug 4.	N. P. Ry. Co., fare, Portland, Ore., to Seattle, Wash.....	\$5. 60
	N. P. Ry. Co., sleeper, Portland, Ore., to Seattle, Wash.....	2. 00
	Transfer baggage, hotel to depot, Portland, Ore.....	. 50
	Bus fare, hotel to depot, Portland, Ore.....	. 25
5.	Fee to porter on sleeper.....	. 25
	Transfer baggage, depot to hotel, Seattle, Wash.....	. 25
6.	N. P. Ry. Co., sleeper, Seattle to Spokane, Wash.....	2. 50
	Transfer baggage, hotel to depot, Seattle, Wash.....	. 50
7.	To Amis Flexner, Portland, Ore., for.....	5. 60
	Fee to porter on sleeper.....	. 25
	Transfer baggage, depot to hotel, Spokane.....	. 50
10	Transfer baggage, hotel to depot, Spokane.....	. 50
	N. P. Ry. Co., sleeper, Spokane, Wash., to St. Paul, Minn.....	9. 50
11	Fee to porter on sleeper.....	. 25
12	Fee to porter on sleeper.....	. 25
13	Fee to porter on sleeper.....	. 25
	Pullman parlor car fare, St. Paul, Minn., to Chicago, Ill.....	1. 25
	Bus fare, depot to hotel, Chicago.....	. 50
	Transfer baggage, depot to hotel, Chicago.....	. 50
15	Bus fare, hotel to depot, Chicago.....	. 50
	Transfer baggage, hotel to depot, Chicago.....	. 50
	To Lorene Sheetz, Chicago, Ill., for typewriting 146 pages & 2 carbon copies, at \$55.00 per job (voucher 1).....	55. 00

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Aug. 16.	Fee to porter on sleeper.....	\$0.25
	Transfer baggage, depot to house, New York City.....	.50
	N. Y., N. H. & H., sleeper, New York City, to Boston, Mass.....	1.50
17.	Fee to porter on sleeper.....	.25
	Boston & Maine R. R., fare, Boston to Beverly, Mass. (no reduction round trip ticket).....	.35
	Bus fare, depot to hotel, Beverly, Mass.....	.25
		<hr/> 84.70
18.	To Warner Livery Stable, Beverly, Mass., hire hack & driver, no expenses, to country & return, from 2.30 p. m. to 5.30 p. m., Aug. 18th, at \$1.50 per first hour & \$1.00 each succeeding hour (V. 2).....	3.50
	B. & M. R. R., fare, Beverly to Boston, Mass.....	.35
20.	To ———, Boston, Mass., for copy 3 pages legal cap, at 35 cts. per page & six pages carbon copy, at 5 cts. per page (V. 3).....	1.35
23.	N. Y., N. H. & H., sleeper, Boston, Mass., to New York City.....	1.50
24.	Fee to porter on sleeper.....	.25
	Transfer baggage, house to depot, New York City.....	.50
	N. Y. Central Ry., sleeper, New York City to Chicago, Ill.....	5.00
	Telegraph message from Albany, N. Y., to Ella Shartell, Seattle, Wash. (23 words).....	.46
25.	Fee to porter on sleeper.....	.25
	Transfer baggage, depot to hotel, Chicago, Ill.....	.50
	Bus fare, depot to hotel, Chicago, Ill.....	.50
26.	Telegraph message from Chicago to Ella Shartell, Seattle, Wash., 26 words.....	.47
29.	C. N. W. Ry., sleeper, Chicago to St. Paul, Minn.....	2.00
	Bus fare, hotel to depot, Chicago.....	.50
	Transfer baggage, hotel to depot, Chicago.....	.50
30.	Fee to porter on sleeper.....	.25
31.	Fee to porter on sleeper.....	.25
	Notary fee to this account.....	.50
	Total.....	<hr/> 108.93
	Per diem, Aug. 1 to Aug. 31, 31 days, at \$3.....	93.00
	Salary, Aug. 1 to Aug. 31, at \$2,220.00 per annum.....	<hr/> 185.00
		<hr/> 386.93

TRANSPORTATION REQUESTS.

Aug. 10—	T. R. 47913, N. P. Ry. Co., fare, Spokane, Wash., to Chicago, Ill. (\$46.70).
15—	47914, Penn. R. R. Co., fare, Chicago, Ill., to New York City (\$20.00).
	47915, Penn. R. R. Co., berth & extra fare, Chicago, Ill., to New York City (\$15.00).
16—	47916, N. Y., N. H. & H. R. R., fare, New York City to Boston, Mass (\$4.65).
23—	47917, N. Y., N. H. & H. R. R., fare, Boston, Mass., to New York City (\$4.65).
24—	47918, N. Y. C. R. R., fare, New York City to Chicago, Ill. (\$24.00).
27—	47919, C. N. W. Ry. Co., fare, Chicago, Ill., to Portland, Ore. (\$56.90).
	47920, Pullman Co., berth, St. Paul, Minn., to Seattle, Wash. (\$12.00).

[Copy.]

To Lorene Sheetz & Company, public stenographers, 918 First Nat'l Bank Bldg.

To 96 pages copy with 2 carbons each, at.....	\$26.55
To 51 pages dictated with 2 carbons each, at.....	28.45
	<hr/> 55.00

Received payment.

(Signed) LORENE SHEETZ & Co.

Department of the Interior, General Land Office. 4—160. Form approved by Comptroller of the Treasury April 11, 1908.

INVESTIGATION INTERIOR DEPT. AND BUREAU OF FORESTRY. 2739

SUBVOUCHER FOR TRAVELING AND OTHER EXPENSES. No. 4

AUGUST 20, 1909.

Received of L. R. Glavis, Chief of Field Division, one and 35/100 dollars in cash, in full payment of following account:

For typewriting three pages of legal cap at \$0.35 per page	\$1. 05
And six pages, carbon copy, at 5 cts. per page.....	. 30
Total.....	\$1. 35

(Signed) MARY A. DOOTSON,
Boston, Mass.

(Not to be signed in duplicate.)

Copying, multigraphing, correspondence, mimeographing. . Telephones: Central, 6104; Automatic, 3764.)

STENOGRAPHIC BUREAU.

LORENE SHEETZ & COMPANY.

Law stenography a specialty. All kinds of high grade stenographic work. Notary public, 918 First National Bank Building, Chicago.

LORENE SHEETZ.

DAISY M'CLEARY.

Department of the Interior, General Land Office. 4-160. Form approved by Comptroller of the Treasury April 11, 1908.

SUBVOUCHER FOR TRAVELING AND OTHER EXPENSES. No. 2.

AUGUST 15, 1909.

Received of L. R. Glavis, Chief of Field Division, fifty-five no /100 dollars in cash, in full payment of following account:

To 96 pages copy, with 2 carbons, and 51 pages, dictated, with 2 carbons, at \$55 per job.....	\$55. 00
Total.....	55. 00

(Signed) LORENE SHEETZ,
918 First National Bank Bldg., Chicago, Ill.

(Not to be signed in duplicate.)

[Telegram.]

JUNEAU, ALS., Nov. 24th, 09.

JAMES M. SHERIDAN,
Seattle, Wn.:

None of the letters taken from this office by Special Agent Bowman on August 14th, nineteen nine, have been returned.

Register and Receiver.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Portland, Oregon, November 16, 1909.

Mr JAMES M. SHERIDAN,
Special Agent, G. L. O., Seattle, Wash.

SIR: In accordance with your verbal request, I am transmitting herewith the affidavit made by myself this date before Herman Baumhold, a notary public, of Portland, Oregon, concerning the loss or disappearance of certain records, papers, and letters from the files of the office of the chief of field division, general land office, Seattle, Washington.

I am also enclosing herewith copy of my letter of November 5, 1909, addressed to Hon. H. H. Schwartz, Chief of Field Service, with which I enclosed copies of the two letters written by myself on the same date to L. R. Glavis, in care of the United States land office, Vancouver, Washington, concerning the disappearance of the papers described therein; and also copy of Mr. Glavis' reply to said letter, dated at Portland,

Oregon, on November 15, 1909, in which he denies that he has copies of the papers requested by me, stating that they are either in my possession or among the papers furnished the Forest Service for their assistance in the trial of the coal cases.

This correspondence is self-explanatory.

Mr. Glavis states that I misquoted him in the letter to him of November 5th, which is untrue. I stated in said letter substantially what he told me and what occurred during our conversation. It is regretted that it could not be arranged to have some one present in order that my statements could be verified; but, as that was impossible, it is a matter of my statement against that of Glavis. Suffice to say that I have no interest in this matter except to bring out the truth and that I would not misquote him in any way.

I have this date furnished Mr. Schwartz with a copy of this letter, and also have forwarded him a copy of my affidavit for his information.

In view of Mr. Glavis' reply and also in view of the disappearance of important records, I would suggest that this matter be immediately presented to the United States attorney with a view to having the matter sifted by the next grand jury.

As I have heretofore advised you, I have called on Mr. Maguire for an affidavit from him concerning the missing records, and as soon as same is received I shall forward it to you. If there is anything further I can do to assist you, do not hesitate to call upon me.

You will note that I had a list made of the letters and telegrams and papers which were unlawfully taken from the office by Mr. Glavis on the evening of September 18, 1909. These papers were all turned over to you, but I have received no receipt from you for them. As it appears they all relate to the Cunningham case and the Alaska coal cases, I assume they are now in your possession.

In view of the importance of the matter, I would be pleased if you would check your records and furnish me with a receipt for all of the papers mentioned in said list.

I left you a copy of my affidavit last evening, and I will request that you correct same in accordance with the original, forwarded herewith, and send the copy to me for my records. I have sent the only copy I have to Mr. Schwartz.

Very respectfully,

A. CHRISTENSEN,
Chief of Field Division.

Affidavit of Andrew Christensen, of Portland, Oregon, relative to disappearance and loss of certain records, papers, and letters from the files in the office of the Chief of Field Division, General Land Office, at Seattle, Washington.

STATE OF OREGON, County of Multnomah, ss:.

On this, the 16th day of November, 1909, before me, Herman Bumhoer, a notary public in and for the county and State aforesaid, came Andrew Christensen, who being first duly sworn, did upon oath declare that he would full, true, and correct answers make to all such interrogatories as might be propounded to him concerning the matters hereinafter severally mentioned and shown. Whereupon the said name Andrew Christensen was interrogated, and to such interrogation responded all in the manner following, to wit:

First. Please state your name and present place of residence.

Answer. Andrew Christensen; Portland, Oregon.

Second. In what employment are you now engaged, and in what capacity do you serve?

Answer. Chief of first field division of the United States General Land Office, with headquarters at Portland, Ore. I am at the present time also in temporary charge of the seventeenth field division, with headquarters at Seattle, Wash., where I have complete charge of all of the records.

Third. Where were you employed, and in what capacity, between the first day of August and the twenty-fifth day of September, 1909?

Answer. From August 1 to September 25, 1909, I was in Portland, Oregon, in charge of the first field division. From September 16, 1909, until the present time, in addition to being in charge of the first field division of the General Land Office at Portland, Oregon, I have been in charge of the seventeenth field division, with headquarters at Seattle, Washington.

Fourth. Under whose direction and supervision were you then and there employed and serving?

Answer. I was then and am now employed under the direction of the Commissioner of the General Land Office, Department of the Interior.

Fifth. Did you then or have you now any knowledge or information concerning the pendency and prosecution of an investigation respecting the validity of thirty-three coal-land entries, embracing lands in the Juneau land district, in the Territory of Alaska, commonly known as "The Cunningham group" of claims or entries?

Answer. On August 1st I did not have any knowledge of what is known as "The Cunningham group," but since assuming charge of the seventeenth field division have learned generally of the questions involved, but know nothing specifically about the facts in the case.

Sixth. What special agent or special agents were employed in that investigation, at the same or different times, if you know? Please state the name or names of such agent or agents, and their present place of residence, if known to you.

Answer. I understand that former Special Agent H. K. Love was employed in the investigation of these entries, also Special Agent Horace T. Jones and former Chief of Field Division L. R. Glavis. Since my assuming charge of the seventeenth field division, I know that Special Agent J. M. Sheridan has been engaged upon the case and assisted by William B. Pugh.

Seventh. Did you have any knowledge or information concerning the presence in the office of the chief of field division, in Seattle, of any papers, or records, pertaining to these claims, or any of them, and to the investigation then being conducted?

Answer. I did not have any knowledge or information concerning the presence in the office of the chief of field division at Seattle of any papers pertaining to the Cunningham claims, until the records were turned over to me by former Chief of Field Division Glavis. At that time it was my understanding that no records whatever relating to the Cunningham claims were on file in this office; I was so informed by Mr. Glavis. Since the arrival of Special Agent J. M. Sheridan he has kept in the office of the chief of field division, at Seattle, Washington, the papers pertaining to said Cunningham case.

Eighth. Where were those records and papers usually deposited and preserved?

Answer. Those papers were, and are at the present time so far as I know, in the office of the chief of field division at Seattle, Washington, under the immediate charge of Mr. Sheridan.

Ninth. Are you aware of the fact that some of the papers composing the files pertaining to that investigation were, during the period mentioned in the third interrogatory, removed and transported from their proper place of custody, and that they have never been returned thereto?

Answer. When the records were turned over to me by former Chief of Field Division Glavis an envelope containing a large number of letters secured from the Juneau, Alaska, land office by Special Agent A. R. Bowman were given by Mr. Glavis to Miss Schwinnen, a stenographer who was temporarily employed by me in assisting in making a record of the papers, for the purpose of making a copy of a list which was enclosed in the envelope with the letters. After Miss Schwinnen had completed copying the list I instructed Special Agent Robert F. Maguire to check the letters with the list, and Mr. Maguire found that some twenty-four letters were missing. I then wrote Mr. Glavis a letter dated September 20, 1909, as follows:

SEATTLE, WASH., September 20, 1909.

Mr. LOUIS R. GLAVIS,
Lincoln Hotel, Seattle, Washington.

Sir: In the list of letters received by Special Agent Arthur R. Bowman, from the land office at Juneau, Alaska, the following letters are missing:

12-31-06. Wendell McLaughlin.	8-3-07. Thos. Payne.
6-24-07. Archie W. Shields.	9-26-07. Clarence Cunningham.
11-8-07. A. N. Wheatley.	12-11-07. Clarence Cunningham.
12-23-07. W. S. Yearsley.	6-3-08. James D. Finch.
5-9-08. Clarence Cunningham.	3-10-08. Clarence Cunningham.
1-19-08. Clarence Cunningham.	5-23-08. Wm. Sulzer.
4-3-08. Frank Watson.	4-13-08. Clarence Cunningham.
3-14-08. Clarence Cunningham.	3-12-08. H. R. Harriman.
1-7-08. Arthur D. Jones.	1-9-08. Clarence Cunningham (tele-
1-15-08. Clarence Cunningham (tele-	gram).
12-23-08. R. A. Ballinger.	1-4-08. A. N. Wheatley.
4-23-08. M. A. Green.	4-19-09. Walter M. French.
	1-17-09. M. A. Green.

I respectfully request that you advise me, if possible, what disposition was made of them and where they can be found.

Very respectfully,

A. CHRISTENSEN,
Chief of Field Division.

Mr. Glavis replied to this letter verbally, stating that all of the official records had been turned over to me, and that these particular letters he assumed were somewhere in the files of the office. He added that they were not in his possession and that he could not at that time advise me where I could find them. Subsequently this matter was called to the attention of Special Agent Sheridan, and it seems from a re-check of these letters it was found that the telegram dated January 15, 1908, from Clarence Cunningham and the letters from Archie W. Shields of August 24, 1907, and A. N. Wheatley of November 8, 1907, had been accounted for. These are the only papers, so far as I know, pertaining to this particular investigation (Cunningham) that during the period mentioned have been removed or transported from their proper place of custody and never been returned thereto.

Tenth. Were you at any time a witness to the removal and transportation from such place of custody and from said office of any of said papers? If so, please state what papers were so taken and carried away, and by whom?

Answer. I have not been a witness to the removal or transportation of any papers from their place of custody, except that on the evening of September 18, 1909, when we were about to complete the record of the papers on file in the office of the chief of the seventeenth field division, Mr. Glavis had certain papers in his possession, which he declined to turn over to me until a receipt was furnished to him. I informed him that they were files of the office and should remain here, and that if he desired a receipt he could dictate it to Mr. Frank L. Spaulding, who was a stenographer in the office at that time. He promised to do that and to turn the papers over to Spaulding to keep them in escrow until a proper receipt could be furnished. Mr. Glavis had a bundle of papers under his arm, and I asked him before his departure if they contained any of the official records of the office, to which he replied that they did not that they were all personal papers. I discovered, however, after he had left that he did have certain important papers, official files of the office, with him at that time, and that he then and there had deliberately lied to me. These papers were not secured from him until I had threatened to prosecute him both criminally and civilly. They were finally delivered to the office about nine o'clock a. m. Monday morning, September 20. I found after those papers had been turned over to me that they contained one or two of the telegrams or letters mentioned in my letter to him of September 20, one of them being a letter from Clarence Cunningham to the register and receiver of the United States land office at Juneau, Alaska, dated January 15, 1908. This letter was at all times in Glavis's possession until Monday morning, September 20, when the other important papers he declined to give to me on Saturday evening were delivered to me. I am unable to state specifically at this time what other papers included in the list in my letter to L. R. Glavis of September 20, 1909, were turned over to me at that time.

That was the only time that I was a witness to the removal of records from their proper place of custody in this office.

Eleventh. Were you present in the office of the chief of field division, in Seattle, when Mr. Arthur R. Bowman, a special agent of the General Land Office, returned from a journey to Alaska on or about the 30th day of August, 1909, and do you know, or remember, that on that occasion he brought to and left in said office a small leather satchel or case, commonly carried by him when employed in the field?

Answer. I was not present in the office of the chief of field division of the General Land Office, at Seattle, Washington, during the month of August, 1909.

Twelfth. Did you know, or did Mr. Bowman advise you, or did you in any way receive information, concerning the contents of that case or satchel, or did Mr. Bowman make to you any statement, or give to you any direction respecting its custody, or the disposition of its contents?

Answer. Mr. Bowman never advised me or ever talked to me concerning the contents of any suit case or satchel, nor did he ever give me any direction respecting its custody or the disposition of its contents.

Thirteenth. Did you, at that time, or at any subsequent time, know, or in any way learn, that, among other things, said satchel contained a large number of letters secured by Mr. Bowman from the register and receiver in charge of the district land office at Juneau, Alaska, some of which letters were written in relation to the so-called Cunningham group of coal land entries? Please state all you may know or have learned in this connection.

Answer. My answers to questions 9 and 10 I believe fully answer this question. I may add, however, in reply to this question, that my first knowledge concerning these missing letters was when the matter was called to my attention by Special Agent Maguire. He discovered that the letters mentioned in the above letter were missing and called my attention to the matter.

Fourteenth. Were you present at any time between the dates mentioned in the third interrogatory, namely, August 1 and September 25, 1909, when the above-mentioned satchel was opened and its contents examined? If so, please state by whom such inspection was made?

Answer. I personally examined the contents of said satchel on Saturday, September 18, with a view to ascertaining what, if any, papers were therein that belonged to the records of the office. I did not see Mr. Glavis remove the envelope containing the records from the Juneau, Alaska, land office from the satchel, and do not know from what source he received it when he gave it to Miss Schwinnen to copy the list of the letters it contained. Both Mr. Glavis and myself examined the contents of said satchel at that time—as I was looking over the table which was, and is, located in the corner of the private office of the chief of field division at Seattle, and in doing so discovered said satchel. Mr. Glavis informed me that it belonged to Mr. Bowman, but that it did not contain any records of the office, which, after examination, I found to be true. If the satchel ever did contain any official records prior to my inspection thereof, such records had been removed by some person or persons unknown to me.

Fifteenth. Did you then, or at any other time, see any of the letters, or papers, contained in said satchel, or which may have been contained therein, removed therefrom? If so, please state the name of the person by whom they were so removed, and what disposition was made of such removed papers, if you know.

Answer. I did not see any papers removed from said satchel at any time. I do not know who removed the papers from the satchel.

Sixteenth. If you did not actually witness the opening of said case or satchel and the removal of papers therefrom, state whether you had any reason to believe that it had been so opened and its contents inspected. If so, please state your reason for so believing and the name of the person by whom you believe it to have been opened.

Answer. My only knowledge of the person removing any papers from the said satchel is from the fact that the envelope containing the letters secured by Special Agent Bowman from the Juneau, Alaska, land office was given to Miss Schwinnen to copy the list therefrom. As before stated, I do not know from what source Mr. Glavis secured the envelope when he gave it to Miss Schwinnen. Said satchel was at all times in the possession of Mr. Glavis in the portion of the office which was used by him, and was not seen by me until Saturday evening, September 18; it was at all times under his control and in his possession until that time. I had nothing whatever to do with it until that evening. If said envelope was left in the satchel by Mr. Bowman, no one but Mr. Glavis could have removed it therefrom, because, so far as I know, its existence was not known to anyone in the office until it was given to Miss Schwinnen by Mr. Glavis. Therefore, the satchel must have been opened and the papers removed therefrom by Mr. Glavis.

Seventeenth. Did you, at any time, or in any manner aid or assist any person or persons in the removal, carrying away, concealment, or suppression of any of the records, papers, or letters referred to in the foregoing interrogatories, or were you at any time a witness to any such act of removal, transportation, and subsequent concealment of any of such records or papers, on the part of any other person or persons?

Answer. I never at any time or in any manner aided or assisted any person in the removal, carrying away, concealment, or suppression of any of the records, letters, or other papers referred to in the foregoing interrogatories, but, as before stated, in my answers to questions 9 and 10, I was a witness to the unlawful removal of these important documents from the office of the chief of the seventeenth field division by Mr. L. R. Glavis, who willfully and intentionally took from the said office, without my consent, important letters and papers, a list of which is hereto attached, marked Exhibit "A," and among them being the letter above mentioned, written by Clarence Cunningham to the register and receiver of the Juneau, Alaska, land office, dated January 15, 1908.

Eighteenth. Have you any knowledge or information whatever concerning the present custody and possession of said missing records, papers, or letters? If so, please state what that knowledge is and describe the records or papers to which it relates. Please state any and all facts known to you which may bear on or tend to explain the disappearance and loss of any of the records, or papers, or letters.

Answer. I have no knowledge or information whatever concerning the present custody and possession of said missing records, papers, or letters. I know that these letters are not in my possession as chief of field division, nor are they in the office of the chief of the seventeenth field division at Seattle, Washington, at this time, nor have they been, so far as I know, since I assumed charge on September 16, 1909. All of the records of this office, and all of the desks of the special agents and stenographers have been carefully searched, but the said missing papers can not be found. I can not account for their disappearance except that they must have been removed from

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Mr. Bowman's satchel by Mr. Glavis, who is the only one, so far as I know, who had access to the satchel and the contents thereof until the evening of September 18, 1909. He was the one responsible for their custody until that time, and this is the only explanation that I can give for the disappearance or loss of any of the records or papers or letters.

ANDREW CHRISTENSEN

Subscribed and sworn to before me by Andrew Christensen this the 16th day of November, 1909.

[SEAL.]

HERMAN BAUMHOER,
Notary Public.

My commission expires January 10, 1910.

EXHIBIT A.

ALASKA COAL CASES.

Letters and telegrams as follows:

Original letter from Fred Dennett, acting commissioner, to Mr. Horace T. Jones, special agent, dated June 21, 1907.

Copy of letter to the honorable commissioner, dated August 10, 1907, by a special agent, copy unsigned.

Copy of letter to honorable commissioner, dated August 13, 07, by a special agent, copy unsigned.

Copy of letter from L. R. Glavis, Chief Field Division, to Commissioner General Land Office, dated November 12, 1907.

Original letter to Mr. Louis R. Glavis, Chief Field Division, from Horace Tillard Jones, special agent, dated December 2, 1907.

Original letter from R. A. Ballinger, commissioner, to Mr. Louis R. Glavis, Chief Field Division, dated December 28, 1907.

Original letter from Clarence Cunningham to the register and receiver, United States land office, Juneau, Alaska, dated Jan. 15, 08.

Original letter from H. K. Love, special agent, to Mr. L. R. Glavis, Chief Field Division, dated January 17, 1908.

Copy of letter to Hon. Oscar Foote, Seattle, Washington, unsigned, dated March 10, 1908.

Original telegram to Special Agent Glavis from Dennett, commissioner, dated May 2, 08.

Original telegram from Dennett, commissioner, to Spl. Agt. L. R. Glavis, dated Mar. 10, 1909.

Original telegram from Schwartz, Chief of Field Svc., to Spl. Agt. Glavis dated Apl. 20th.

Original telegram from Schwartz, Chief of Field Divn., to Special Agent Glavis, dated April 24, 1909.

Copy of letter from L. R. Glavis, Chief Field Division, to Mr. H. H. Schwartz, Chief of Field Service, dated April 27, 1909.

Original letter from H. L. Underwood, assistant chief of Field Service, to Mr. L. R. Glavis, Chief Field Division, dated May 24, 1909.

Impression copy of a letter from Secretary to the Attorney-General, dated May —, 1909.

Impression copy of letter from Frank Pierce, First Assistant Secretary, to the Commissioner of the General Land Office, dated May 19, 1909.

Original letter from Louis R. Glavis, Chief Field Division, to the Commissioner General Land Office, dated May 26, 1909.

Original telegram from Glavis, chief, to Commissioner General Land Office, dated June 23, 1909.

Original telegram from Dennett, commissioner, to Spl. Agt. Glavis, dated June 24, 09.

Copy of telegram from Glavis, chief, to H. H. Schwartz, dated June 29, 1909.

Copy of telegram from Glavis, chief, to Commissioner General Land Office, dated June 30, 1909.

Original telegram from Schwartz, acting asst. comr., to Special Agent Glavis, dated July 1, 1909.

Copy of letter from L. R. Glavis, Chief Field Division, to Commissioner General Land Office, dated July 8, 1909.

Copy of telegram from Glavis, chief, to Commissioner General Land Office, dated July 16, 1909.

Original letter from H. H. Schwartz, acting assistant commissioner, to Mr. L. R. Glavis, chief of field division, dated July 23, 1909.

On September 18, 1909, Mr. Christensen asked Mr. Glavis whether or not he had papers belonging to the files of the Chief of Field Division or to the files of the General Land Office in his possession, and was advised by Mr. Glavis that he had no such papers. Mr. Glavis was asked the same question on Monday, September 20, 1909, and he gave the same reply. On November 5, 1909, Mr. Glavis handed to Mr. Christensen a large number of papers which were properly part of the files of the office of the 1st and 17th field divisions, accompanied by the following letter:

"In looking through my personal letter files I discovered some letters and copies of letters that might be considered semiofficial, and I therefore deliver them to you."

On November 8, 1909, a messenger from the Forest Service delivered to Mr. Christensen, in the office of the Chief of Field Division at Seattle, Washington, a number of papers which properly belonged to files of the 1st and 17th field divisions of the General Land Office, which letters were accompanied by a letter from Mr. Charles R. Pierce, district law officer, Forest Service, stating as follows:

"I inclose some copies of original letters which were among some typewritten copies of letters transmitted to the Forest Service by Mr. Glavis on September 18th."

On November 10th, 1909, Mr. Christensen wrote Mr. Pierce asking him to advise him what source the papers delivered on November 8th were received by him, to which Mr. Pierce replied on November 14th, as follows:

"Mr. Shaw's letter of October 25th to Special Agent Sheridan replies fully to certain inquiries of similar character to yours, propounded to him by Mr. Sheridan. The originals I returned to you were inadvertently overlooked by Mr. Shaw and myself at the time the first few were sorted out and returned to you. So far as I am aware the Forest Service has no more original letters or original documents of any character among the carbons delivered by Mr. Glavis to this service."

A. CHRISTENSEN.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Portland, Oreg., November 16, 1909.

Mr J. M. SHERIDAN,
Special Agent, G. L. O., Seattle, Wash.

SIR: I am transmitting herewith the original vouchers No. 2 and 3 of the expense account of Louis R. Glavis for the month of August, 1909, also pencil notes of his said account. Please place these with the other papers belonging to his accounts, unless you desire to use them in the possible criminal prosecution.

I am also enclosing photographic copies of said vouchers and accounts for use in any possible criminal prosecution. These photographic copies have been furnished to me by the General Land Office. I have retained one photographic copy here.

Very respectfully,

A. CHRISTENSEN, Chief of Field Division.

Aug 4.	N. P. Ry. Co., fare, Portland, Ore., to Seattle, Wash.....	\$5. 60
	N. P. Ry. Co., sleeper, Portland, Ore., to Seattle, Wash.....	2. 00
	Transfer baggage, hotel to depot, Portland, Ore.....	. 50
	Bus fare, hotel to depot, Portland, Ore.....	. 25
5.	Fee to porter on sleeper.....	. 25
	Transfer baggage, depot to hotel, Seattle, Wash.....	. 25
6.	N. P. Ry. Co., sleeper, Seattle to Spokane, Wash.....	2. 50
	Transfer baggage, hotel to depot, Seattle, Wash.....	. 50
7.	To Amias Flexner, Portland, Ore., for.....	5. 60
	Fee to porter on sleeper.....	. 25
	Transfer baggage, depot to hotel, Spokane.....	. 50
10.	Transfer baggage, hotel to depot, Spokane.....	. 50
	N. P. Ry. Co., sleeper, Spokane, Wash., to St. Paul, Minn.....	9. 50
11.	Fee to porter on sleeper.....	. 25
12.	Fee to porter on sleeper.....	. 25
13.	Fee to porter on sleeper.....	. 25
	Pullman parlor car fare, St. Paul, Minn., to Chicago, Ill.....	1. 25
	Bus fare, depot to hotel, Chicago.....	. 50
	Transfer baggage, depot to hotel, Chicago.....	. 50
15.	Bus fare, hotel to depot, Chicago.....	. 50
	Transfer baggage, hotel to depot, Chicago.....	. 50
	To Lorene Sheetz, Chicago, Ill., for typewriting 146 pages & 2 carbon copies, at \$55.00 per job (voucher 1).....	55. 00

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Aug. 16. Fee to porter on sleeper.....	\$0.25
Transfer baggage, depot to house, New York City.....	.50
N. Y., N. H. & H., sleeper, New York City, to Boston, Mass.....	1.50
17. Fee to porter on sleeper.....	.25
Boston & Maine R. R., fare, Boston to Beverly, Mass. (no reduction round trip ticket).....	.35
Bus fare, depot to hotel, Beverly, Mass.....	.50
	84.70
18. To Warner Livery Stable, Beverly, Mass., hire hack & driver, no expenses, to country & return, from 2.30 p. m. to 5.30 p. m., Aug. 18th, at \$1.50 per first hour & \$1.00 each succeeding hour (V. 2).....	3.50
B. & M. R. R., fare, Beverly to Boston, Mass.....	.35
20. To ———, Boston, Mass., for copy 3 pages legal cap, at 35 cts. per page & six pages carbon copy, at 5 cts. per page (V. 3).....	1.35
23. N. Y., N. H. & H., sleeper, Boston, Mass., to New York City.....	1.50
24. Fee to porter on sleeper.....	.25
Transfer baggage, house to depot, New York City.....	.50
N. Y. Central Ry., sleeper, New York City to Chicago, Ill.....	5.00
Telegraph message from Albany, N. Y., to Ella Shartell, Seattle, Wash. (23 words).....	.40
25. Fee to porter on sleeper.....	.25
Transfer baggage, depot to hotel, Chicago, Ill.....	.50
Bus fare, depot to hotel, Chicago, Ill.....	.50
26. Telegraph message from Chicago to Ella Shartell, Seattle, Wash., 26 words.....	.45
29. C. N. W. Ry., sleeper, Chicago to St. Paul, Minn.....	2.00
Bus fare, hotel to depot, Chicago.....	.50
Transfer baggage, hotel to depot, Chicago.....	.50
30. Fee to porter on sleeper.....	.25
31. Fee to porter on sleeper.....	.25
Notary fee to this account.....	.50
Total.....	108.95
Per diem, Aug. 1 to Aug. 31, 31 days, at \$3.....	93.00
Salary, Aug. 1 to Aug. 31, at \$2,220.00 per annum.....	185.00
	386.95

TRANSPORTATION REQUESTS.

Aug. 10—T. R. 47913, N. P. Ry. Co., fare, Spokane, Wash., to Chicago, Ill. (\$46.70).	
15—47914, Penn. R. R. Co., fare, Chicago, Ill., to New York City (\$20.00).	
47915, Penn. R. R. Co., berth & extra fare, Chicago, Ill., to New York City (\$15.00).	
16—47916, N. Y., N. H. & H. R. R., fare, New York City to Boston, Mass. (\$4.65).	
23—47917, N. Y., N. H. & H. R. R., fare, Boston, Mass., to New York City (\$4.65).	
24—47918, N. Y. C. R. R., fare, New York City to Chicago, Ill. (\$24.00).	
27—47919, C. N. W. Ry. Co., fare, Chicago, Ill., to Portland, Ore. (\$56.90).	
47920, Pullman Co., berth, St. Paul, Minn., to Seattle, Wash. (\$12.00).	

[Copy.]

To Lorene Sheetz & Company, public stenographers, 918 First Nat'l Bank Bldg.

To 96 pages copy with 2 carbons each, at.....	\$26.55
To 51 pages dictated with 2 carbons each, at.....	28.45
	55.00

Received payment.

(Signed) LORENE SHEETZ & Co.

Department of the Interior, General Land Office. 4—160. Form approved by Comptroller of the Treasury April 11, 1908.

INVESTIGATION INTERIOR DEPT. AND BUREAU OF FORESTRY. 2739

SUBVOUCHER FOR TRAVELING AND OTHER EXPENSES. No. 4

AUGUST 20, 1909.

Received of L. R. Glavis, Chief of Field Division, one and 35/100 dollars in cash, full payment of following account:

for typewriting three pages of legal cap at \$0.35 per page	\$1.05
and six pages, carbon copy, at 5 cts. per page.....	.30
Total.....	\$1.35

(Signed) MARY A. DOOTSON,
Boston, Mass.

(Not to be signed in duplicate.)

copying, multigraphing, correspondence, mimeographing. · Telephones: Central, 6104; Automatic, 3764.)

STENOGRAPHIC BUREAU.

LORENE SHEETZ & COMPANY.

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LORENE SHEETZ.

DAISY M'CLEARY.

Department of the Interior, General Land Office. 4—160. Form approved by comptroller of the Treasury April 11, 1908.

SUBVOUCHER FOR TRAVELING AND OTHER EXPENSES. No. 2.

AUGUST 15, 1909.

Received of L. R. Glavis, Chief of Field Division, fifty-five no /100 dollars in cash, full payment of following account:

for 96 pages copy, with 2 carbons, and 51 pages, dictated, with 2 carbons, at \$55 per job.....	\$55.00
Total.....	55.00

(Signed) LORENE SHEETZ,
918 First National Bank Bldg., Chicago, Ill.

(Not to be signed in duplicate.)

[Telegram.]

JUNEAU, ALA., Nov. 24th, 09.

MES M. SHERIDAN,
Seattle, Wn.:

None of the letters taken from this office by Special Agent Bowman on August 15th, nineteen nine, have been returned.

Register and Receiver.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Portland, Oregon, November 16, 1909.

MR. JAMES M. SHERIDAN,
Special Agent, G. L. O., Seattle, Wash.

SIR: In accordance with your verbal request, I am transmitting herewith the affidavit made by myself this date before Herman Baumhold, a notary public, of Portland, Oregon, concerning the loss or disappearance of certain records, papers, and letters from the files of the office of the chief of field division, general land office, Seattle, Washington.

I am also enclosing herewith copy of my letter of November 5, 1909, addressed to you H. H. Schwartz, Chief of Field Service, with which I enclosed copies of the two letters written by myself on the same date to L. R. Glavis, in care of the United States land office, Vancouver, Washington, concerning the disappearance of the papers described therein; and also copy of Mr. Glavis' reply to said letter, dated at Portland,

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You were unable to account for their whereabouts, nor would you state what disposition you made of the two carbons. You informed me, however, that the original had been forwarded to the President.

Demand is therefore hereby made upon you for the two carbons of 96 pages of copy and 51 pages of dictation mentioned in the above described voucher.

If I am not in receipt of said carbons within five days after you receive this letter or a letter from you making full statement of the whereabouts of said carbons from the time they were completed by the stenographer until the present time, necessary action will be taken by this office with a view to protecting the interests of the Government.

Very respectfully,

Chief of Field Division.

PORTLAND, OREGON, November 5, 1909.

Mr. L. R. GLAVIS,
c/o U. S. Land Office, Vancouver, Wash.

SIR: In connection with my letter to you of even date, in which I made formal demand upon you for certain official records which are now in your possession and which are unlawfully retained by you, I have to request that you answer the following questions:

1. What disposition was made of the two carbons immediately after they were received by you from the stenographer?
2. Was one of the copies of said carbon delivered to any person?
3. If so, state to whom it was delivered and how long he had it in his possession.
4. If you are returning both carbons to me, and if one of the carbons was delivered to any person, state when it was returned to you.
5. If both copies have been delivered to other persons, state to whom and when they were both returned to you.
6. What was the understanding between yourself and the parties to whom they were delivered as to the disposition to be made of them?
7. Are you now returning to me the original carbon copies or are they only duplicates of the carbons?

It is further requested that you make reply to the foregoing questions under oath and accompany your reply with the carbon copies.

Very respectfully,

Chief of Field Division.

PORTLAND, OREGON, November 15, 1909.

Mr. A. CHRISTENSEN,
Chief of Field Division, General Land Office, Portland, Oregon.

SIR: Replying to your two letters, dated November 5, in reference to the two carbon copies of my report to the President, you are advised that I have no such copies, and that the same are either in your possession or are among the papers I furnished the Forest Service for their assistance in the trials of the coal cases.

The above is a correct statement regarding the whereabouts of the papers, and in your letter of November 5 you have misquoted my conversation with you.

Very respectfully,

L. R. GLAVIS

Affidavit of Sydney N. Stoner, of Seattle, Wash., relative to disappearance and loss of certain records, papers, and letters from the files in the office of the chief of Field Division, General Land Office, at Seattle, Washington.

STATE OF WASHINGTON, County of King, sslet:

On this the twelfth day of November, 1909, before me, R. M. Hopkins, a notary public in and for the county and State aforesaid, came Sydney N. Stoner, who, being first duly sworn, did upon his said oath declare that he would full, true, and correct answers make to all such interrogatories as might be propounded to him concerning the matters hereinafter severally mentioned and shown. Whereupon the said named Sydney N. Stoner was interrogated, and to such interrogation responded, all in the manner following, to wit:

First. Please state your name and present place of residence.

Answer. Sydney N. Stoner, St. Albans, 10th and John sts., Seattle, Wash.

Fifth. Did you then or have you now any knowledge or information concerning the pendency and prosecution of an investigation respecting the validity of thirty-three coal-land entries, embracing lands in the Juneau land district, in the Territory of Alaska, commonly known as "The Cunningham group" of claims or entries?

Answer. On August 1st I did not have any knowledge of what is known as "The Cunningham group," but since assuming charge of the seventeenth field division have learned generally of the questions involved, but know nothing specifically about the facts in the case.

Sixth. What special agent or special agents were employed in that investigation, at the same or different times, if you know? Please state the name or names of such agent or agents, and their present place of residence, if known to you.

Answer. I understand that former Special Agent H. K. Love was employed in the investigation of these entries, also Special Agent Horace T. Jones and former Chief of Field Division L. R. Glavis. Since my assuming charge of the seventeenth field division, I know that Special Agent J. M. Sheridan has been engaged upon the case and assisted by William B. Pugh.

Seventh. Did you have any knowledge or information concerning the presence in the office of the chief of field division, in Seattle, of any papers, or records, pertaining to these claims, or any of them, and to the investigation then being conducted?

Answer. I did not have any knowledge or information concerning the presence in the office of the chief of field division at Seattle of any papers pertaining to the Cunningham claims, until the records were turned over to me by former Chief of Field Division Glavis. At that time it was my understanding that no records whatever relating to the Cunningham claims were on file in this office; I was so informed by Mr. Glavis. Since the arrival of Special Agent J. M. Sheridan he has kept in the office of the chief of field division, at Seattle, Washington, the papers pertaining to the Cunningham case.

Eighth. Where were those records and papers usually deposited and preserved?

Answer. Those papers were, and are at the present time so far as I know, in the office of the chief of field division at Seattle, Washington, under the immediate charge of Mr. Sheridan.

Ninth. Are you aware of the fact that some of the papers composing the files pertaining to that investigation were, during the period mentioned in the third interrogatory, moved and transported from their proper place of custody, and that they have never been returned thereto?

Answer. When the records were turned over to me by former Chief of Field Division Glavis an envelope containing a large number of letters secured from the Juneau, Alaska, land office by Special Agent A. R. Bowman were given by Mr. Glavis to Miss Schwinnen, a stenographer who was temporarily employed by me in assisting in making a record of the papers, for the purpose of making a copy of a list which was enclosed in the envelope with the letters. After Miss Schwinnen had completed copying the list I instructed Special Agent Robert F. Maguire to check the letters with the list, and Mr. Maguire found that some twenty-four letters were missing. He then wrote Mr. Glavis a letter dated September 20, 1909, as follows:

SEATTLE, WASH., September 20, 1909.

J. LOUIS R. GLAVIS,
Lincoln Hotel, Seattle, Washington.

SIR: In the list of letters received by Special Agent Arthur R. Bowman, from the land office at Juneau, Alaska, the following letters are missing:

2-31-06. Wendell McLaughlin.
2-24-07. Archie W. Shields.
1-8-07. A. N. Wheatley.
2-23-07. W. S. Yearsley.
9-08. Clarence Cunningham.
19-08. Clarence Cunningham.
3-08. Frank Watson.
14-08. Clarence Cunningham.
7-08. Arthur D. Jones.
15-08. Clarence Cunningham (telegram).
2-23-08. R. A. Ballinger.
2-23-08. M. A. Green.

8-3-07. Thos. Payne.
9-26-07. Clarence Cunningham.
12-11-07. Clarence Cunningham.
6-3-08. James D. Finch.
3-10-08. Clarence Cunningham.
5-23-08. Wm. Sulzer.
4-13-08. Clarence Cunningham.
3-12-08. H. R. Harriman.
1-9-08. Clarence Cunningham (telegram).
1-4-08. A. N. Wheatley.
4-19-09. Walter M. French.
1-17-09. M. A. Green.

I respectfully request that you advise me, if possible, what disposition was made of them and where they can be found.

Very respectfully,

A. CHRISTENSEN,
Chief of Field Division.

Mr. Glavis replied to this letter verbally, stating that all of the official records had been turned over to me, and that these particular letters he assumed were somewhere in the files of the office. He added that they were not in his possession and that he could not at that time advise me where I could find them. Subsequently this matter was called to the attention of Special Agent Sheridan, and it seems from a re-check of these letters it was found that the telegram dated January 15, 1908, from Clarence Cunningham and the letters from Archie W. Shields of August 24, 1907, and A. J. Wheatley of November 8, 1907, had been accounted for. These are the only papers so far as I know, pertaining to this particular investigation (Cunningham) that during the period mentioned have been removed or transported from their proper place of custody and never been returned thereto.

Tenth. Were you at any time a witness to the removal and transportation from such place of custody and from said office of any of said papers? If so, please state what papers were so taken and carried away, and by whom?

Answer. I have not been a witness to the removal or transportation of any papers from their place of custody, except that on the evening of September 18, 1909, when we were about to complete the record of the papers on file in the office of the chief of the seventeenth field division, Mr. Glavis had certain papers in his possession, which he declined to turn over to me until a receipt was furnished to him. I informed him that they were files of the office and should remain here, and that if he desired a receipt he could dictate it to Mr. Frank L. Spaulding, who was a stenographer in the office at that time. He promised to do that and to turn the papers over to Spaulding to keep them in escrow until a proper receipt could be furnished. Mr. Glavis had a bundle of papers under his arm, and I asked him before his departure if they contained any of the official records of the office, to which he replied that they did not and that they were all personal papers. I discovered, however, after he had left that he did have certain important papers, official files of the office, with him at that time, and that he then and there had deliberately lied to me. These papers were not secured from him until I had threatened to prosecute him both criminally and civilly. They were finally delivered to the office about nine o'clock a. m. Monday morning, September 20. I found after those papers had been turned over to me that they contained one or two of the telegrams or letters mentioned in my letter to him of September 20, one of them being a letter from Clarence Cunningham to the register and receiver of the United States land office at Juneau, Alaska, dated January 15, 1908. This letter was at all times in Glavis's possession until Monday morning, September 20, when the other important papers he declined to give to me on Saturday evening were delivered to me. I am unable to state specifically at this time what other papers included in the list in my letter to L. R. Glavis of September 20, 1909, were turned over to me at that time.

That was the only time that I was a witness to the removal of records from their proper place of custody in this office.

Eleventh. Were you present in the office of the chief of field division, in Seattle, when Mr. Arthur R. Bowman, a special agent of the General Land Office, returned from a journey to Alaska on or about the 30th day of August, 1909, and do you know or remember, that on that occasion he brought to and left in said office a small leather satchel or case, commonly carried by him when employed in the field?

Answer. I was not present in the office of the chief of field division of the General Land Office, at Seattle, Washington, during the month of August, 1909.

Twelfth. Did you know, or did Mr. Bowman advise you, or did you in any way receive information, concerning the contents of that case or satchel, or did Mr. Bowman make to you any statement, or give to you any direction respecting its custody or the disposition of its contents?

Answer. Mr. Bowman never advised me or ever talked to me concerning the contents of any suit case or satchel, nor did he ever give me any direction respecting its custody or the disposition of its contents.

Thirteenth. Did you, at that time, or at any subsequent time, know, or in any way learn, that, among other things, said satchel contained a large number of letters secured by Mr. Bowman from the register and receiver in charge of the district land office at Juneau, Alaska, some of which letters were written in relation to the so-called Cunningham group of coal land entries? Please state all you may know or have learned in this connection.

Answer. My answers to questions 9 and 10 I believe fully answer this question. I may add, however, in reply to this question, that my first knowledge concerning these missing letters was when the matter was called to my attention by Special Agent Maguire. He discovered that the letters mentioned in the above letter were missing and called my attention to the matter.

Fourteenth. Were you present at any time between the dates mentioned in the third interrogatory, namely, August 1 and September 25, 1909, when the above-mentioned satchel was opened and its contents examined? If so, please state by whom such inspection was made?

Answer. I personally examined the contents of said satchel on Saturday, September 18, with a view to ascertaining what, if any, papers were therein that belonged to the records of the office. I did not see Mr. Glavis remove the envelope containing the records from the Juneau, Alaska, land office from the satchel, and do not know from what source he received it when he gave it to Miss Schwinnen to copy the list of the letters it contained. Both Mr. Glavis and myself examined the contents of said satchel at that time—as I was looking over the table which was, and is, located in the corner of the private office of the chief of field division at Seattle, and in doing so discovered said satchel. Mr. Glavis informed me that it belonged to Mr. Bowman, but that it did not contain any records of the office, which, after examination, I found to be true. If the satchel ever did contain any official records prior to my inspection thereof, such records had been removed by some person or persons unknown to me.

Fifteenth. Did you then, or at any other time, see any of the letters, or papers, contained in said satchel, or which may have been contained therein, removed therefrom? If so, please state the name of the person by whom they were so removed, and what disposition was made of such removed papers, if you know.

Answer. I did not see any papers removed from said satchel at any time. I do not know who removed the papers from the satchel.

Sixteenth. If you did not actually witness the opening of said case or satchel and the removal of papers therefrom, state whether you had any reason to believe that it had been so opened and its contents inspected. If so, please state your reason for so believing and the name of the person by whom you believe it to have been opened.

Answer. My only knowledge of the person removing any papers from the said satchel is from the fact that the envelope containing the letters secured by Special Agent Bowman from the Juneau, Alaska, land office was given to Miss Schwinnen to copy the list therefrom. As before stated, I do not know from what source Mr. Glavis secured the envelope when he gave it to Miss Schwinnen. Said satchel was all times in the possession of Mr. Glavis in the portion of the office which was used by him, and was not seen by me until Saturday evening, September 18; it was at all times under his control and in his possession until that time. I had nothing whatever to do with it until that evening. If said envelope was left in the satchel by Mr. Bowman, no one but Mr. Glavis could have removed it therefrom, because, so far as I know, its existence was not known to anyone in the office until it was given to Miss Schwinnen by Mr. Glavis. Therefore, the satchel must have been opened and the papers removed therefrom by Mr. Glavis.

Seventeenth. Did you, at any time, or in any manner aid or assist any person or persons in the removal, carrying away, concealment, or suppression of any of the records, papers, or letters referred to in the foregoing interrogatories, or were you at any time a witness to any such act of removal, transportation, and subsequent concealment of any of such records or papers, on the part of any other person or persons?

Answer. I never at any time or in any manner aided or assisted any person in the removal, carrying away, concealment, or suppression of any of the records, letters, or other papers referred to in the foregoing interrogatories, but, as before stated, in my answers to questions 9 and 10, I was a witness to the unlawful removal of these important documents from the office of the chief of the seventeenth field division by Mr. R. Glavis, who willfully and intentionally took from the said office, without my consent, important letters and papers, a list of which is hereto attached, marked Exhibit "A," and among them being the letter above mentioned, written by Clarence Cunningham to the register and receiver of the Juneau, Alaska, land office, dated January 15, 1908.

Eighteenth. Have you any knowledge or information whatever concerning the present custody and possession of said missing records, papers, or letters? If so, please state what that knowledge is and describe the records or papers to which it relates. Please state any and all facts known to you which may bear on or tend to explain the disappearance and loss of any of the records, or papers, or letters.

Answer. I have no knowledge or information whatever concerning the present custody and possession of said missing records, papers, or letters. I know that these letters are not in my possession as chief of field division, nor are they in the office of the chief of the seventeenth field division at Seattle, Washington, at this time, nor have they been, so far as I know, since I assumed charge on September 16, 1909. All the records of this office, and all of the desks of the special agents and stenographers have been carefully searched, but the said missing papers can not be found. I can not account for their disappearance except that they must have been removed from

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Mr. Bowman's satchel by Mr. Glavis, who is the only one, so far as I know, who had access to the satchel and the contents thereof until the evening of September 18, 1909. He was the one responsible for their custody until that time, and this is the only explanation that I can give for the disappearance or loss of any of the records or papers or letters.

ANDREW CHRISTENSEN.

Subscribed and sworn to before me by Andrew Christensen this the 16th day of November, 1909.

[SEAL.]

HERMAN BAUMHOER,
Notary Public

My commission expires January 10, 1910.

EXHIBIT A.

ALASKA COAL CASES.

Letters and telegrams as follows:

Original letter from Fred Dennett, acting commissioner, to Mr. Horace T. Jones, special agent, dated June 21, 1907.

Copy of letter to the honorable commissioner, dated August 10, 1907, by a special agent, copy unsigned.

Copy of letter to honorable commissioner, dated August 13, 07, by a special agent, copy unsigned.

Copy of letter from L. R. Glavis, Chief Field Division, to Commissioner General Land Office, dated November 12, 1907.

Original letter to Mr. Louis R. Glavis, Chief Field Division, from Horace Tillard Jones, special agent, dated December 2, 1907.

Original letter from R. A. Ballinger, commissioner, to Mr. Louis R. Glavis, Chief Field Division, dated December 28, 1907.

Original letter from Clarence Cunningham to the register and receiver, United States land office, Juneau, Alaska, dated Jan. 15, 08.

Original letter from H. K. Love, special agent, to Mr. L. R. Glavis, Chief Field Division, dated January 17, 1908.

Copy of letter to Hon. Oscar Foote, Seattle, Washington, unsigned, dated March 10, 1908.

Original telegram to Special Agent Glavis from Dennett, commissioner, dated May 2, 08.

Original telegram from Dennett, commissioner, to Spl. Agt. L. R. Glavis, dated Mar. 10, 1909.

Original telegram from Schwartz, Chief of Field Svc., to Spl. Agt. Glavis dated Apl. 20th.

Original telegram from Schwartz, Chief of Field Divn., to Special Agent Glavis dated April 24, 1909.

Copy of letter from L. R. Glavis, Chief Field Division, to Mr. H. H. Schwartz, Chief of Field Service, dated April 27, 1909.

Original letter from H. L. Underwood, assistant chief of Field Service, to Mr. L. R. Glavis, Chief Field Division, dated May 24, 1909.

Impression copy of a letter from Secretary to the Attorney-General, dated May 1, 1909.

Impression copy of letter from Frank Pierce, First Assistant Secretary, to the Commissioner of the General Land Office, dated May 19, 1909.

Original letter from Louis R. Glavis, Chief Field Division, to the Commissioner General Land Office, dated May 26, 1909.

Original telegram from Glavis, chief, to Commissioner General Land Office, dated June 23, 1909.

Original telegram from Dennett, commissioner, to Spl. Agt. Glavis, dated June 24, 09.

Copy of telegram from Glavis, chief, to H. H. Schwartz, dated June 29, 1909.

Copy of telegram from Glavis, chief, to Commissioner General Land Office, dated June 30, 1909.

Original telegram from Schwartz, acting asst. comr., to Special Agent Glavis, dated July 1, 1909.

Copy of letter from L. R. Glavis, Chief Field Division, to Commissioner General Land Office, dated July 8, 1909.

Copy of telegram from Glavis, chief, to Commissioner General Land Office, dated July 16, 1909.

Original letter from H. H. Schwartz, acting assistant commissioner, to Mr. L. R. Glavis, chief of field division, dated July 23, 1909.

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Copy of letter from L. R. Glavis, Chief Field Division, to Hon. Fred Dennett, Commissioner G. L. O., dated July 28, 1909.

Original letter H. H. Schwartz to L. R. Glavis, Chief Field Division, dated August 1, 1909.

Original letter H. H. Schwartz, acting assistant commissioner, to L. R. Glavis, dated August 11, 1909.

Copy of telegram from Schwartz, acting assistant commissioner, to J. M. Sheridan, special agent, dated Aug. 17, 09.

Original telegram from J. M. Sheridan to H. H. Schwartz, G. L. O., Washington, D. C., dated Aug. 19, 09.

Original telegram from Sheridan to H. H. Schwartz, G. L. O., Washington, D. C., dated Aug. 30, 09.

Original telegram from Sheridan to M. D. McEniry, Denver, Colo., dated Aug. 30, 09.

Copy of telegram from Glavis, chief, to Commissioner General Land Office, Washington, D. C., dated Sept. 17, 1909.

Original telegram from Schwartz, chief, to L. R. Glavis, chief, dated Sept. 18, 1909.

Copy of telegram from Glavis, chief, to H. H. Schwartz, General Land Office, Washington, D. C., dated Sept. 18, 1909.

Copy of report of coal property in Kayak recording district controlled by Clarence Cunningham.

PORTLAND, OREGON, November 5, 1909.

Hon. H. H. SCHWARTZ,
Chief of Field Service, Washington, D. C.

SIR: I have to inform you that I succeeded in getting an interview with Mr. Glavis to-day, after considerable scouting. I found him in conference with A. C. Shaw, the assistant district forester, and the district forester, in the office of the latter. They seemed much surprised at my sudden appearance.

I requested Mr. Glavis to accompany me to the office in order that I might question him concerning official matters, but he declined to do so, and only went as far as the hall. I then made personal demand upon him for the two copies of the typewriting mentioned in the voucher of Lorene Sheetz, of Chicago. He first stated that he had overlooked turning this over to me, and that he would look into the matter and send them to me. I asked him what disposition he had made of them, but he evaded the question, and finally stated that I should write him, when he would make full statement to me. It was impossible to get any definite statement from him. He agreed fully that they were official records and that they should have been left in the office, but could not or would not account for his failure to turn them over to me.

I also questioned him concerning the records which were turned over to Mr. Shaw by him, and by Mr. Shaw to Mr. Sheridan, but he declined to make any statement concerning them.

I have therefore written him and have requested him to reply to certain questions, a copy of which letters are attached herewith.

Very respectfully,

Chief of Field Division.

PORTLAND, OREGON, November 5, 1909.

Mr. L. R. GLAVIS,
U. S. United States Land Office, Vancouver, Wash.

SIR: Referring to our conversation of even date in which I requested you to furnish me with the original carbon copies of the official matters, for which you paid \$55.00 to Lorene Sheetz, of Chicago, Illinois, on the following voucher, which was included in your expense account for the month of August, 1909, and for which you have been reimbursed by check drawn in your favor by yourself:

Subvoucher for travelling and other expenses.

No. 2.

AUGUST 15, 1909.

Received of L. R. Glavis, Chief of Field Division, fifty-five no/100 dollars, in cash, in full payment of following account:

To 96 pages copy with 2 carbons, and 51 pages dictated with 2 carbons, at \$55.00 per job. \$55.00.

LORENE SHEETZ,
918 First National Bank Bldg., Chicago, Ill.

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had been so opened and its contents inspected. If so, please state your reason for so believing and the name of the person by whom you believe it to have been so opened.

Answer. No.

Seventeenth. Did you, at any time, or in any manner aid or assist any person, or persons, in the removal, carrying away, concealment, or suppression of any of the records, papers, or letters referred to in the foregoing interrogatories, or were you at any time a witness to any such act of removal, transportation, and subsequent concealment of any of such records or papers, on the part of any other person or persons?

Answer. No. Do not know that I was a witness.

Eighteenth. Have you any knowledge or information whatever concerning the present custody and possession of said missing records, papers, or letters? If so, please state what that knowledge is and describe the records or papers to which it relates. Please state any and all facts known to you, which may bear on, or tend to explain the disappearance and loss of any of the records, or papers, or letters.

Answer. Have no knowledge.

ROBERT F. MAGUIRE.

Subscribed and sworn to before me by Robert F. Maguire this the 19th day of November, 1909.

[SEAL.]

HERMAN BAUMHOER, Notary Public.

My commission expires January 10, 1910.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Seattle, Wash., September 20, 1909.

Mr. LOUIS R. GLAVIS,
Lincoln Hotel, Seattle, Washington.

SIR: In the list of letters received by Special Agent Arthur R. Bowman from the land office at Juneau, Alaska, the following letters are missing:

12, 31, 1906. Wendell McLaughlin.	8, 3, 1907. Thos. Payne.
8, 24, 1907. Archie W. Shields.	9, 26, 1907. Clarence Cunningham.
11, 8, 1907. A. N. Wheatley.	12, 11, 1907. Clarence Cunningham.
12, 23, 1907. W. S. Yearsley.	6, 3, 1908. James D. Finch.
5, 9, 1908. Clarence Cunningham.	3, 10, 1908. Clarence Cunningham.
3, 19, 1908. Clarence Cunningham.	5, 23, 1908. Wm. Sulzer.
4, 3, 1908. Frank Watson.	4, 13, 1908. Clarence Cunningham.
3, 14, 1908. Clarence Cunningham.	3, 12, 1908. H. R. Harriman.
1, 7, 1908. Arthur D. Jones.	1, 9, 1908. Clarence Cunningham
1, 15, 1908. Clarence Cunningham	(telegram).
(telegram).	1, 4, 1908. A. N. Wheatley.
12, 23, 1908. R. A. Ballinger.	4, 19, 1909. Walter M. French.
4, 23, 1908. M. A. Green.	1, 17, 1909. M. A. Green.

I respectfully request that you advise me, if possible, what disposition was made of them and where they can be found.

Very respectfully,

A. CHRISTENSEN,
Chief of Field Division.

Affidavit of _____, of _____, relative to disappearance and loss of certain records, papers, and letters from the files in the office of the Chief of Field Division, General Land Office, at Seattle, Washington.

STATE OF WYOMING, County of Laramie, sctd.:

On this, the 23d day of November, 1909, before me, Margaret Bailey, a notary public in and for the county and State aforesaid, came Frank L. Spaulding, who, being first duly sworn, did upon his said oath declare that he would full, true, and correct answers make to all such interrogatories as might be propounded to him concerning the matters hereinafter severally mentioned and shown. Whereupon the said named Frank L. Spaulding was interrogated, and to such interrogation responded all in the manner following, to wit:

First. Please state your name and present place of residence.

Answer. Frank L. Spaulding, 119 W. 19th st., Cheyenne, Wyoming.

Second. In what employment are you now engaged, and in what capacity do you serve?

Answer. Special agent, G. L. O.

Third. Where were you employed, and in what capacity, between the first day of August and the twenty-fifth day of September, 1909?

Answer. As special agent, G. L. O.

From August 1st to September 1st I was employed in and returning from Alaska.

From September 1st to September 25th I was employed in the office of chief of field division, G. L. O., in room 219, Federal Building, Seattle, Wash.

Fourth. Under whose direction and supervision were you then and there employed and serving?

Answer. From August 1st to Sept. 18 under the direction of L. R. Glavis.

From Sept. 19th to the present time under direction of A. Christensen.

Fifth. Did you then, or have you now, any knowledge, or information, concerning the pendency and prosecution of an investigation respecting the validity of thirty-three coal land entries, embracing lands in the Juneau land district, in the Territory of Alaska, commonly known as "The Cunningham group" of claims or entries?

Answer. Yes.

Sixth. What special agent, or special agents, were employed in that investigation, at the same or at different times, if you know? Please state the name or names of such agent or agents, and their present place of residence, if known to you.

Answer. H. K. Love, H. T. Jones, L. R. Glavis, and J. M. Sheridan have been employed in the investigation of these cases prior to Aug. 1st, 1909. Since Aug. 1st to Sept. 18 L. R. Glavis had charge of the investigation. A. Kennedy and myself made field investigation of the entries during August of this year.

Seventh. Did you have any knowledge or information concerning the presence in the office of the chief of field division in Seattle of any papers or records pertaining to these claims, or any of them, and to the investigation then being conducted?

Answer. I was informed that the papers and records of the case were in Washington, except such field notes of surveys made by A. Kennedy and myself in the field investigation made by A. Kennedy and myself in August.

Eighth. Where were those records and papers usually deposited and preserved?

Answer. Usually deposited in the vertical files in the office of chief of field division.

Ninth. Are you aware of the fact that some of the papers composing the files pertaining to that investigation were, during the period mentioned in the third interrogatory, removed and transported from their proper place of custody, and that they have never been returned thereto?

Answer. I have been so informed by Mr. J. M. Sheridan and A. Christensen.

Tenth. Were you at any time a witness to the removal and transportation from such place of custody and from said office of any of said papers? If so, please state what papers were so taken and carried away, and by whom.

Answer. No.

Eleventh. Were you present in the office of the chief of field division, in Seattle, when Mr. Arthur R. Bowman, a special agent of the General Land Office, returned from a journey to Alaska, on or about the tenth day of August, 1909, and do you know, or remember, that on that occasion he brought to and left in said office a small leather satchel, or case, commonly carried by him when employed in the field?

Answer. No.

Twelfth. Did you know, or did Mr. Bowman advise you, or did you in any way receive information concerning the contents of that case or satchel, or did Mr. Bowman make to you any statement, or give to you any direction respecting its custody, or the disposition of its contents?

Answer. No.

Thirteenth. Did you at that time, or at any subsequent time, know, or in any wise learn, that, among other things, said satchel contained a large number of letters secured by Mr. Bowman from the register and receiver in charge of the district land office at Juneau, Alaska, some of which letters were written in relation to the so-called Cunningham group of coal-land entries? Please state all you may know or have learned in this connection.

Answer. I was informed some time after Sept. 18th by Mr. Christensen that Mr. Bowman had secured papers and letters from the Juneau land office and that some of them were missing. I have never been informed just what letters and papers Mr. Bowman brought from Juneau, except that he obtained data relating to about one hundred and twenty new coal cases and some letters. I saw one letter written by C. Cunningham to the register. This letter is now in the files of this office, which bears date of Seattle, Wash., Jan. 15, 1908. S. K. S.

Fourteenth. Were you present at any time between the dates mentioned in the third interrogatory, namely, August first and September twenty-fifth, 1909, when

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Sixteenth. If you did not actually witness the opening of said case or satchel and the removal of papers therefrom, state whether you had any reason to believe that it had been so opened and its contents inspected. If so, please state your reason for so believing and the name of the person by whom you believe it to have been so opened.

Answer. Not knowing anything about it, had no reason to believe it had been opened or inspected.

Seventeenth. Did you, at any time or in any manner, aid or assist any person or persons in the removal, carrying away, concealment, or suppression of any of the records, papers, or letters referred to in the foregoing interrogatories, or were you at any time a witness to any such act of removal, transportation, and subsequent concealment of any of such records or papers on the part of any other person or persons?

Answer. No, sir; not to my knowledge. The day Bowman left for the East he took one from the office. Knowing he had one which he carried on his trips, thought nothing of it. Don't know whether this is the one referred to or not.

From making up the August account of Mr. Glavis I noticed copy of a telegram from Mr. Glavis to Miss Shartell, directing Mr. Bowman to meet him in Chicago, but when Bowman left I did not know where he was going.

Eighteenth. Have you any knowledge or information whatever concerning the present custody and possession of said missing records, papers, or letters? If so, please state what that knowledge is and describe the records or papers to which it relates. Please state any and all facts known to you which may bear on or tend to explain the disappearance and loss of any of the records or papers or letters.

Answer. Never heard of any such papers until this date. I know Bowman went to Juneau for certain information, but never knew what it was he went after. I carried a sealed letter to him for Mr. Glavis and gave it to him on the boat a few minutes before it was to sail.

FRANK L. SPAULDING.

Subscribed and sworn to before me by Frank L. Spaulding this the 23rd day of November, 1909.

[SEAL.]

MARGARET BAILEY,
Notary Public.

My commission expires January 30, 1911.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Cheyenne, Wyo., November 23, 1909.

Mr. JAMES M. SHERIDAN,
Special Agent G. L. O., Seattle, Wash.

SIR: Replying to your letter of the 11th instant, I hand you herewith sworn interrogatories of Agent Spaulding, as per your request. After careful cross questioning. I am satisfied that Spaulding is not the guilty party. He seems to think that the responsibility for those missing papers lies between Mr. Glavis and Mr. Bowman.

If I can be of any further service, let me know. The delay was unavoidable, as I had wires out for Spaulding, but he was in the field and I could not readily connect with him.

Very respectfully,

A. BAKER, Chief of Field Division.

STATE OF WYOMING, }
County of Laramie. } ss:

I, Frank L. Spaulding, being first duly sworn, depose and say: That on the 13th day of September, 1909, I was a clerk in the office of the seventeenth field division of the General Land Office at Seattle, Washington; that on that day, at the request of Mr. L. R. Glavis, and according to an agreement between Mr. Glavis and Mr. A. Christensen, as I understood, I went to the Lincoln Hotel in Seattle, Washington, at 8 p. m. and there Mr. Glavis dictated from papers in his possession a memoranda or description of each paper to me, which I took down in shorthand; that the aborthand notes hereto attached are the original notes of such dictation taken by me at that time, and that the transcript, hereto attached, is a full, true, and complete transcript of said notes as made by me this 22nd day of November, 1909, in the office of the seventh field division, at Cheyenne, Wyoming.

Further, that on the following Monday, or a few days later, Mr. Christensen turned over to me papers which I understood were the papers Mr. Glavis had not yet turned

Answer. In field work, Harney County, Oregon; office work, Portland, Oregon, and the office of the Chief of Field Division, Seattle, Wash., as special agent, General and Office.

Fourth. Under whose direction and supervision were you then and there employed and serving?

Answer. Andrew Christensen, Chief of Field Division, General Land Office.

Fifth. Did you then or have you now any knowledge or information concerning the pendency and prosecution of an investigation respecting the validity of thirty-three coal land entries, embracing lands in the Juneau land district, in the Territory of Alaska, commonly known as "the Cunningham group" of claims or entries?

Answer. Only hearsay, to the effect that such an investigation was pending.

Sixth. What special agent or special agents were employed in that investigation at the same or at different times, if you know? Please state the name or names of such agent or agents, and their present place of residence, if known to you.

Answer. Do not know.

Seventh. Did you have any knowledge or information concerning the presence in the office of the chief of field division in Seattle of any papers or records pertaining to these claims, or any of them, and to the investigation then being conducted?

Answer. Yes; under the direction of Mr. Christensen I assisted in checking over the files, records, property, and papers in the office, and in making up receipts therefor. Among the papers were some relating to the "Cunningham" coal cases.

Eighth. Where were those records and papers usually deposited and preserved?

Answer. Do not know.

Ninth. Are you aware of the fact that some of the papers composing the files pertaining to that investigation were, during the period mentioned in the third interrogatory, removed and transported from their proper place of custody, and that they have never been returned thereto?

Answer. No.

Tenth. Were you at any time a witness to the removal and transportation from such place of custody and from said office of any of said papers? If so, please state what papers were so taken and carried away, and by whom.

Answer. No.

Eleventh. Were you present in the office of the chief of field division, in Seattle, when Mr. Arthur R. Bowman, a special agent of the General Land Office, returned from a journey to Alaska on or about the — day of August, 1909, and do you know or remember that on that occasion he brought to and left in said office a small leather satchel or case, commonly carried by him when employed in the field?

Answer. No; do not remember or know.

Twelfth. Did you know, or did Mr. Bowman advise you, or did you in any way receive information concerning the contents of that case or satchel, or did Mr. Bowman make to you any statement, or give to you any direction respecting its custody or the disposition of its contents?

Answer. Never talked with Mr. Bowman.

Thirteenth. Did you, at that time or at any subsequent time, know, or in any wise learn, that, among other things, said satchel contained a large number of letters secured by Mr. Bowman from the register and receiver in charge of the district land office at Juneau, Alaska, some of which letters were written in relation to the so-called Cunningham group of coal-land entries? Please state all you may know or have learned in this connection.

Answer. No; knew nothing about any satchel, but on September 19 and 20th, checked over a list of papers, purporting to have been received by Special Agent A. R. Bowman from the land office at Juneau, Alaska. I was unable to find the letters enumerated in the carbon copy of a letter dated September 20, 1909, addressed to L. R. Glavis, which is marked "Exhibit A" and attached to and made a part hereof. I prepared the letter above referred to for the signature of Mr. Andrew Christensen.

Fourteenth. Were you present at any time between the dates mentioned in the third interrogatory, namely, August first and September twenty-fifth, 1909, when the above-mentioned satchel was opened and its contents examined? If so, please state by whom such inspection was made.

Answer. No.

Fifteenth. Did you then, or at any other time, see any of the letters or papers contained in said satchel, or which may have been contained therein, removed therefrom? If so, please state the name of the person by whom they were so removed, and what disposition was made of such removed papers, if you know.

Answer. No.

Sixteenth. If you did not actually witness the opening of said case or satchel and the removal of papers therefrom, state whether you had any reason to believe that it

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had been so opened and its contents inspected. If so, please state your reason for so believing and the name of the person by whom you believe it to have been so opened.

Answer. No.

Seventeenth. Did you, at any time, or in any manner aid or assist any person, or persons, in the removal, carrying away, concealment, or suppression of any of the records, papers, or letters referred to in the foregoing interrogatories, or were you at any time a witness to any such act of removal, transportation, and subsequent concealment of any of such records or papers, on the part of any other person or persons?

Answer. No. Do not know that I was a witness.

Eighteenth. Have you any knowledge or information whatever concerning the present custody and possession of said missing records, papers, or letters? If so, please state what that knowledge is and describe the records or papers to which it relates. Please state any and all facts known to you, which may bear on, or tend to explain the disappearance and loss of any of the records, or papers, or letters.

Answer. Have no knowledge.

ROBERT F. MAGUIRE.

Subscribed and sworn to before me by Robert F. Maguire this the 19th day of November, 1909.

[SEAL.]

HERMAN BAUMHOER, Notary Public

My commission expires January 10, 1910.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Seattle, Wash., September 20, 1909

Mr. LOUIS R. GLAVIS,
Lincoln Hotel, Seattle, Washington.

SIR: In the list of letters received by Special Agent Arthur R. Bowman from the land office at Juneau, Alaska, the following letters are missing:

12, 31, 1906. Wendell McLaughlin.	8, 3, 1907. Thos. Payne.
8, 24, 1907. Archie W. Shields.	9, 26, 1907. Clarence Cunningham.
11, 8, 1907. A. N. Wheatley.	12, 11, 1907. Clarence Cunningham.
12, 23, 1907. W. S. Yearsley.	6, 3, 1908. James D. Finch.
5, 9, 1908. Clarence Cunningham.	3, 10, 1908. Clarence Cunningham.
3, 19, 1908. Clarence Cunningham.	5, 23, 1908. Wm. Sulzer.
4, 3, 1908. Frank Watson.	4, 13, 1908. Clarence Cunningham.
3, 14, 1908. Clarence Cunningham.	3, 12, 1908. H. R. Harriman.
1, 7, 1908. Arthur D. Jones.	1, 9, 1908. Clarence Cunningham
1, 15, 1908. Clarence Cunningham	(telegram).
(telegram).	1, 4, 1908. A. N. Wheatley.
12, 23, 1908. R. A. Ballinger.	4, 19, 1909. Walter M. French.
4, 23, 1908. M. A. Green.	1, 17, 1909. M. A. Green.

I respectfully request that you advise me, if possible, what disposition was made of them and where they can be found.

Very respectfully,

A. CHRISTENSEN,
Chief of Field Division.

Affidavit of _____, of _____, relative to disappearance and loss of certain records, papers, and letters from the files in the office of the Chief of Field Division, General Land Office, at Seattle, Washington.

STATE OF WYOMING, County of Laramie, sctd.:

On this, the 23d day of November, 1909, before me, Margaret Bailey, a notary public in and for the county and State aforesaid, came Frank L. Spaulding, who, being first duly sworn, did upon his said oath declare that he would full, true, and correct answers make to all such interrogatories as might be propounded to him concerning the matters hereinafter severally mentioned and shown. Whereupon the said named Frank L. Spaulding was interrogated, and to such interrogation responded all in the manner following, to wit:

First. Please state your name and present place of residence.

Answer. Frank L. Spaulding, 119 W. 19th st., Cheyenne, Wyoming.

Second. In what employment are you now engaged and in what capacity do you serve?

Answer. Department of Interior, General Land Office, as special agent.

Third. Where were you employed, and in what capacity, between the first day of August and the twenty-fifth day of September, 1909?

Answer. Office chief field div., Seattle, Wash.; clerk and spl. dist. agent.

Fourth. Under whose direction and supervision were you then and there employed and serving?

Answer. Mr. Louis R. Glavis, Aug. 1 to Sept. 19, 1909; Mr. A. Christensen, Sept. 19 to Sept. 25, 1909.

Fifth. Did you then or have you now any knowledge or information concerning the pendency and prosecution of an investigation respecting the validity of thirty-three coal-land entries embracing lands in the Juneau land district, in the Territory of Alaska, commonly known as "the Cunningham group" of claims or entries?

Answer. Yes, sir; during all that time.

Sixth. What special agent or special agents were employed in that investigation at the same or at different times, if you know? Please state the name or names of such agent or agents and their present place of residence, if known to you.

Answer. Louis R. Glavis, Raymond E. Gery, Seattle, Wash.; Arthur R. Bowman, Seattle, Wash.; Andrew Kennedy, Seattle, Wash.; Sidney N. Stoner, Seattle, Wash.

Seventh. Did you have any knowledge or information concerning the presence in the office of the chief of field division in Seattle of any papers or records pertaining to these claims, or any of them, and to the investigation then being conducted?

Answer. Yes, sir; the general files.

Eighth. Where were those records and papers usually deposited and preserved?

Answer. In the usual general filing case.

Ninth. Are you aware of the fact that some of the papers composing the files pertaining to that investigation were, during the period mentioned in the third interrogatory, removed and transported from their proper place of custody and that they have never been returned thereto?

Answer. No, sir. The only papers in these cases I know of having been taken from the files are the general papers which I took out and turned over to Mr. Sheridan, on his request. There were the papers Mr. Glavis turned over to Mr. Christensen, but I don't know whether these were ever in the files.

Tenth. Were you at any time a witness to the removal and transportation from such place of custody and from said office of any of said papers? If so, please state what papers were so taken and carried away, and by whom.

Answer. No, sir; not to my knowledge.

Eleventh. Were you present in the office of the chief of field division in Seattle when Mr. Arthur R. Bowman, a special agent of the General Land Office, returned from a journey to Alaska on or about the _____ day of August, 1909, and do you know or remember that on that occasion he brought to and left in said office a small leather satchel or case commonly carried by him when employed in the field?

Answer. I was not there on his return, but know he had a case he carried on trips with him. I saw it in the office several times when Bowman would be in. Remember his having it on his departure for the East after returning from Alaska.

Twelfth. Did you know, or did Mr. Bowman advise you, or did you in any way receive information concerning the contents of that case or satchel, or did Mr. Bowman make to you any statement or give to you any direction respecting its custody or the disposition of its contents?

Answer. No, sir.

Thirteenth. Did you, at that time, or at any subsequent time, know, or in any wise learn, that, among other things, said satchel contained a large number of letters secured by Mr. Bowman from the register and receiver in charge of the district land office at Juneau, Alaska, some of which letters were written in relation to the so-called Cunningham group of coal land entries? Please state all you may know or have learned in this connection.

Answer. Not until the present time.

Fourteenth. Were you present, at any time between the dates mentioned in the third interrogatory, namely, August first and September twenty-fifth, 1909, when the above-mentioned satchel was opened and its contents examined? If so, please state by whom such inspection was made.

Answer. No, sir.

Fifteenth. Did you then, or at any other time, see any of the letters, or papers, contained in said satchel, or which may have been contained therein, removed therefrom? If so, please state the name of the person by whom they were so removed, and what disposition was made of such removed papers, if you know.

Answer. No, sir.

2754 INVESTIGATION INTERIOR DEPT. AND BUREAU OF FORESTRY.

6-24-09. Original telegram from Commissioner Dennett to Spl. Agt. Glavis, Seattle, Washington, of which the following is a true copy. Translation: "Matter mentioned in your wire 21st."

6-23-09. Copy of telegram from Chief Field Division Glavis to Commissioner General Land Office, of which the following is a true copy. Trans. also Cedeg. Answer by wire quick.

6-29-09. Copy of telegram from Chief Field Division Glavis to H. H. Schwartz, G. L. O., of which the following is a true copy.

6-30-09. Copy of telegram from Chief Field Division Glavis to Com'r. General Land Office, Washington, D. C., a true copy thereof being as follows.

7-1-09. Original telegram from Acting Asst. Commissioner Schwartz to Special Agent Glavis, Seattle, Washington, of which the following is a true copy.

7-8-09. Copy of report of Chief Field Division L. R. Glavis to Com'r. of the General Land Office, a true copy of which is as follows.

7-16-09. Telegram from Chief Field Division L. R. Glavis to Commissioner General Land Office, a true copy of which is as follows.

7-23-09. Original letter from Acting Asst. Com'r. H. H. Schwartz to Chief Field Division L. R. Glavis, Seattle, a true copy of which is as follows.

7-26-09. Copy of report of L. R. Glavis, Chief Field Division, to Fred Dennett, Commissioner General Land Office, Seattle, Wash., of which the following is a true copy.

8-10-09. Original letter from Acting Asst. Com'r. H. H. Schwartz to Chief Field Division L. R. Glavis, of which the following is a true copy. The copies of the communication with above letter are as follows. Quote two.

8-11-09. Original letter from Acting Asst. Com'r. H. H. Schwartz to Chief Field Division L. R. Glavis, of which the following is a true copy. The copies transmitted in the above letter are as follows. 2 enclosures.

8-17-09. The following original telegram between Acting Asst. Com'r. Schwartz and Spl. Agt. Jas. M. Sheridan, were charged to me by the Western Union Telegraph Office and were by them delivered to me when their bill was submitted.

8-17-09. Original telegram from Actg. Asst. Com'r. Schwartz to Spl. Agt. J. M. Sheridan, of which the following is a true copy.

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9-17-09. Copy of telegram from Chief Field Division L. R. Glavis to the Commissioner General Land Office, of which the following is a true copy.

9-18-09. Original telegram from Chief Field Service H. H. Schwartz to Chief Field Division L. R. Glavis, of which the following is a true copy.

9-18-09. Copy of telegram from Chief Field Division to H. H. Schwartz, G. L. O., of which the following is a true copy.

As will be seen by the last three telegrams above quoted all papers in the Cunningham case are in the possession of J. M. Sheridan excepting the original report of H. L. Hawkins upon the claims controlled by Clarence Cunningham. The third paragraph thereof on page 2 is as follows.

On pages 7 and 8 the following statement is given.

The first two paragraphs on page 11 are as follows.

In the telegram of Chief Field Service Schwartz dated Sept. 18, 09, to me, which has been herein above quoted, you are advised that the telegram mentioned by him between Mr. Shaw and myself will be found with the miscellaneous letters and papers which have not been listed, owing to the fact that the time for making this transfer has been entirely too short to permit of listing every paper on file in the office.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Cheyenne, Wyo., Nov. 23, 1909.

Mr. A. C. CHRISTENSEN,
Chief of Field Division, G. L. O., Portland, Oreg.

Sir: Pursuant to your request of the 16th instant, I hand you herewith transcript and notes of Special Agent Spaulding.

If I can be of any further service to you, let me know. The matter was delayed somewhat by Spaulding being in the interior on field work and I did not reach him readily by wire.

Very respectfully,

A. BAKER, Chief of Field Division.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Portland, Oregon, November 26, 1909.

Mr. J. M. SHEERIDAN,
Special Agent, G. L. O., Seattle, Wash.

Sir: I enclose herewith affidavit made by Special Agent Spaulding relative to the Glavis matter. Please have Greene or some one in the office make extra copies of this affidavit; also of the transcribed matter by Spaulding, in order that I may have a copy, and so that you may have extra copies.

Very respectfully,

A. CHRISTENSEN,
Chief of Field Division.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Seattle, Wash., November 1, 1909.

Mr. A. CHRISTENSEN,
Chief of Field Division, Seattle, Wash.

Sir: Referring to your verbal request of this date, that I write you a letter in relation to my visits with Mr. L. R. Glavis, former chief of this division, to his rooms at the Lincoln Hotel, this city, on Sept. 16 and Sept. 18, 1909:

I have to say that on Sept. 16 I accompanied Mr. Glavis, at his request, to his rooms at the Lincoln Hotel and remained there about one hour. While there Mr. Glavis was engaged in segregating various official papers from his private papers; some of the official papers he handed over to me to look at; others he merely put in a pile and afterward they were all tied in bundles and brought by us to this office and turned over to you.

On Sept. 18 I again accompanied Mr. Glavis, at his request, to his rooms at the Lincoln and remained there about two hours; as on the former visit, Mr. Glavis segregated some other official papers from his private papers and again handed me various papers to look at. On this occasion, as on the previous one, all the official papers seen by me were tied in bundles and brought by us to this office.

I am unable to recall the exact nature of all the papers seen by me. I do recall, however, that, as far as I know, all the affidavits and other papers relating to the investigation of the Green, Hunt, and Feed groups of coal claims were among the papers, and it was with these papers that I had most to do, looking them over and putting them in order.

There were other papers relating to Oregon matters, the nature of which I am unable to state, except, as I recall it now, Mr. Glavis said they referred to T. B. Neuhausen's accounts and the Long case.

I only saw one paper in any way relating to the Cunningham coal cases; this was a letter written by Clarence Cunningham to the register of the land office at Juneau, Alaska.

All the official paper seen by me in Mr. Glavis's rooms, on both my visits there, were brought by us from there to this office, and if he has retained any official papers in his possession they were not among those seen by me.

I do not know what object Mr. Glavis had in requesting me to visit his rooms except to assist him in conveying the bundles of papers to this office.

Very respectfully,

S. N. STONER,
Special Agent, G. L. O.

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A. BAKER, Chief of Field Division.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Portland, Oregon, November 26, 1909.

Mr. J. M. SHERIDAN,
Special Agent, G. L. O., Seattle, Wash.

SIR: I enclose herewith affidavit made by Special Agent Spaulding relative to the Glavis matter. Please have Greene or some one in the office make extra copies of this affidavit; also of the transcribed matter by Spaulding, in order that I may have a copy, and so that you may have extra copies.

Very respectfully,

A. CHRISTENSEN,
Chief of Field Division.

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GENERAL LAND OFFICE,
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Mr. A. CHRISTENSEN,
Chief of Field Division, Seattle, Wash.

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I do not know what object Mr. Glavis had in requesting me to visit his rooms except to assist him in conveying the bundles of papers to this office.

Very respectfully,

S. N. STONER,
Special Agent, G. L. O.

There are thirteen papers referred to there, transmitted with that communication. Have you already given some of those papers in evidence?

Mr. CHRISTENSEN. Yes, sir. These items mentioned in paragraph 10, the affidavit and letter from Miss Shartell, were introduced the other day.

Mr. VERTREES. And the letter of Stoner, too, has that been put in?

Mr. CHRISTENSEN. No.

Senator SUTHERLAND. The account which Mr. Spaulding testified about, a copy of that is already in?

Mr. CHRISTENSEN. This is a different affidavit.

Senator SUTHERLAND. Oh, no; not the affidavit, but the account itself?

Mr. VERTREES. Have you made—

Mr. CHRISTENSEN. Let me explain this, please. Mr. Stoner made two affidavits. He made one, at the request of Mr. Schwartz, concerning the account, and then he made another affidavit which is attached here.

Senator SUTHERLAND. You mentioned there somewhere the account itself, which Mr. Spaulding copied, as being among the papers. That is already in the record?

Mr. CHRISTENSEN. No; he does not mention the account here, but only matters relative to the disappearance of records. That is what this affidavit relates to.

Mr. VERTREES. You have with you now there the papers referred to in the list or copies of them, have you?

Mr. CHRISTENSEN. Yes, sir.

Mr. VERTREES. I will ask you to file them, and ask that they all be made parts of the record.

The CHAIRMAN. Those are the papers referred to in that letter?

Mr. CHRISTENSEN. Yes, sir.

The CHAIRMAN. Then they are admitted.

Mr. VERTREES. Without reading them now, Mr. Christensen, as I understand it, they merely explain the result of your efforts to locate these missing papers and other papers?

Mr. CHRISTENSEN. Yes, sir; the efforts of Mr. Sheridan and Mr. Pugh, rather—

Mr. VERTREES. Did they have it in hand?

Mr. CHRISTENSEN. Well, principally; I was assisting as it went along, every time I was in Seattle.

Mr. VERTREES. Did the district attorney reply to your communication?

Mr. CHRISTENSEN. No, sir. I wanted to call attention to several memorandums here that were also submitted to Mr. Todd in connection with this case, but which were not enumerated in this letter.

Mr. VERTREES. Let me see them, please. The memorandum to which you refer is the list of the missing letters, is it not?

Mr. CHRISTENSEN. Yes, sir.

Mr. VERTREES. Similar to the one that was submitted by Mr. Parks and already in evidence?

Mr. CHRISTENSEN. Yes, sir.

Mr. VERTREES. Now you say you submitted this to four persons who were they, and what relation have they to you in an official way?

Mr. CHRISTENSEN. The one marked G. R. M. is Glen R. Metzger, special agent assigned to the Seattle division; H. P. Kennedy, a timber cruiser, assigned to that division; another is signed by Andrew Kennedy, who is a mineral expert assigned to that division; and one signed by F. M. Stoner. Mr. Stoner was a special agent there at that time.

Mr. VERTREES. I would like to give these in. They are all alike, and I would only ask Mr. Christensen now to read what each one says at the bottom of the list, in response to his request for information as to these missing letters. It is very brief.

The CHAIRMAN. Very well.

Mr. VERTREES. The first one is who?

Mr. CHRISTENSEN. Glen R. Metzger.

Nothing pertaining to above in my desk, November 15.

G. R. M.

Mr. H. P. Kennedy states:

Failed to find any data in re supra.

Mr. VERTREES. What is the date of that?

Mr. CHRISTENSEN. That is the same date, November 15.

Mr. Andrew Kennedy says:

I do not find any of the above papers in my desk, and to the best of my belief I never saw them.

NOVEMBER 16, 1909.

Special Agent Stoner says:

None of the above papers found in my desk, nor do I know their whereabouts.

NOVEMBER 15, 1909.

(The memorandums are as follows:)

SEATTLE, WASH., November 15, 1909.

MEMORANDUM.

Name.	Date.
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Letter from Clarence Cunningham.....	December 11, 1907
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Letter from Wendell McLaughlin.....	December 31, 1908

Nothing pertaining to above in my desk, Nov. 15th.

G. R. M.

2758 INVESTIGATION INTERIOR DEPT. AND BUREAU OF FORESTRY.

MEMORANDUM.

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H. P. KENNEDY,
T. C. G. L. O.

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ANDREW KENNEDY,
Special Agent

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S. N. STONER, *Special Agt.*

Nov. 15, 1909.

Mr. VERTREES. Who requested the statements of those persons?

Mr. CHRISTENSEN. I did.

Mr. VERTREES. What search, if any, did you make for the papers yourself in the office?

Mr. CHRISTENSEN. I searched two of the desks. There were two other desks in the office except those occupied by those five who made the statements; one that was occupied by Special Agent Gerry, who was a member of the field division, then there was an old roll-top desk that had been used by Mr. Spaulding, and I think at that time was used by Mr. Bowman; I am not sure, though. Mr. Bowman was not assigned to the office at that time.

Mr. VERTREES. You did not search the desks of those men who have made the statements?

Mr. CHRISTENSEN. No, sir; I do not recall that I did.

Mr. VERTREES. What search was made of the office generally for those papers at that time?

Mr. CHRISTENSEN. Miss Shartell, previous to this time, had made a careful search through the files of the office for them.

Mr. VERTREES. They were not to be found?

Mr. CHRISTENSEN. They were not to be found.

Mr. VERTREES. Well, now, what was the next thing with reference to that—

Senator SUTHERLAND. What was the immediate occasion for a search at that time?

Mr. CHRISTENSEN. It was to satisfy ourselves that they were not in the office.

Senator SUTHERLAND. I mean what brought up the subject of a search at that time, in November? They disappeared in September, as I understand it.

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Mr. CHRISTENSEN. It was to satisfy ourselves that they were not in the office.

Senator SUTHERLAND. I mean what brought up the subject of a search at that time, in November? They disappeared in September, as I understand it.

Mr. CHRISTENSEN. Well, yes; but they had been called to our attention particularly. Mr. Sheridan particularly called these letters to Mr. Schwartz's attention, and when Mr. Schwartz found it out he directed that a thorough investigation be made in his letter to Mr. Sheridan of October 23, 1909.

Senator SUTHERLAND. It was that that brought about the search at this particular time?

Mr. CHRISTENSEN. It was that which brought about the search and this investigation.

Mr. VERTREES. Mr. Sheridan at that time was investigating the Cunningham cases?

Mr. CHRISTENSEN. Yes, sir.

Mr. VERTREES. And this investigation was with a view to criminal prosecution if it could be had, was it?

Mr. CHRISTENSEN. Yes, sir.

Mr. JAMES. Did you ever make inquiry of the Juneau land office as to whether they had copies of these letters you were searching for?

Mr. CHRISTENSEN. Did I take it up with them?

Mr. JAMES. Yes; did you ever make inquiry of the Juneau land office whether or not they had copies of these letters—copies of the 24 missing letters?

Mr. CHRISTENSEN. No, sir; I never inquired about that.

Mr. JAMES. How did you happen not to inquire?

Mr. CHRISTENSEN. I do not know; it was probably not thought of.

Mr. JAMES. They were valuable as public documents, and the certified copies would have afforded the same value, would they not?

Mr. CHRISTENSEN. Yes, sir.

Mr. JAMES. You never did make any inquiry to see about that?

Mr. CHRISTENSEN. No; we telegraphed them. The telegram is here, asking if the letters had been returned.

Mr. JAMES. You never did ask whether duplicates or copies had been kept there?

Mr. CHRISTENSEN. No, sir; not that I know of. I did not.

Mr. VERTREES. What was the telegram in reply, Mr. Christensen?

Mr. CHRISTENSEN. I do not know that I have the telegram; I have the reply. Mr. Sheridan, I think, would have the telegram to the register and receiver.

Mr. VERTREES. You were looking for the originals, were you not?

Mr. CHRISTENSEN. Yes, sir; looking for the originals.

The CHAIRMAN. I understood you to say the originals were telegraphed for?

Mr. CHRISTENSEN. Yes, sir.

The CHAIRMAN. Have you the reply to that?

Mr. CHRISTENSEN. Yes, sir; that is one of the exhibits in this case that was just introduced.

The CHAIRMAN. Oh, one in that bunch?

Mr. CHRISTENSEN. Yes, sir.

Mr. VERTREES. What does it say?

Mr. CHRISTENSEN (reading):

JUNEAU, ALASKA, November 24, 1909

JAMES M. SHERIDAN, Seattle, Wash.

None of the letters taken from this office by Special Agent Bowman on August 6, 1909, have been returned.

(Signed)

Register and Receiver.

Mr. JAMES. That refers to the original letters, does it?

Mr. CHRISTENSEN. Yes, sir.

Mr. JAMES. There is no intimation in that that they have any copies, is there?

Mr. CHRISTENSEN. No, sir.

Mr. JAMES. Did you ever receive any information that they did have copies?

Mr. CHRISTENSEN. Well, I have a letter, I think, somewhere from the present register in which he transmits a copy of Bowman's receipt, in which he intimates that he has not the copies. It was not mentioned though that there were not copies, but he states that the present receiver was somewhat anxious as to the whereabouts of these letters and that he did not realize what Bowman was going to do with them when he took them.

Mr. JAMES. And that letter never stated whether or not copies had been retained?

Mr. CHRISTENSEN. No, sir.

Mr. VERTREES. You were looking for the originals that belonged to the office?

Mr. CHRISTENSEN. Yes, sir.

Mr. VERTREES. Those were the papers that you thought had been made away with?

Mr. CHRISTENSEN. Yes, sir.

Mr. VERTREES. Well now, what next?

Mr. CHRISTENSEN. On December 1, I wrote to Mr. Schwartz, transmitting a copy of a letter to Mr. Todd, and in connection with that letter to Mr. Todd I want to state that it was dictated and prepared by Mr. Pugh, because it was originally intended that Mr. Pugh or Mr. Sheridan should present the matter personally to the United States attorney, but they had just completed the hearings in November, the hearings in the Cunningham cases, and were about to leave the city, so the letter was changed to read for my signature.

Mr. VERTREES. Well, let us have it.

Mr. CHRISTENSEN (reading):

Personal.]

SEATTLE, WASH., December 1, 1909.

Hon. H. H. SCHWARTZ,

Chief of Field Service, G. L. O., Washington, D. C.

SIR: In accordance with your instructions to Mr. Sheridan of recent date, and in accordance with my several suggestions, I have the honor to advise you that the matter of the loss or disappearance of certain records belonging to the files of this office, and which it appears might relate to the Cunningham coal cases, has been presented to the United States attorney for his opinion as to whether or not the facts as presented to him are sufficient to justify a grand jury inquiry. I attach herewith a copy of my letter of November 30, 1909, to the United States attorney, which was dictated and prepared by Mr. Pugh; also a schedule of documents accompanying said letter. It would have been such an extended task to copy all the documents mentioned in the schedule that such copies are not attached with this report. I believe, however, that you have been furnished with copies of most of the documents mentioned herein from time to time by Mr. Sheridan and myself.

I am of the opinion that there is sufficient evidence that important documents have been willfully purloined from the office, and if the United States attorney is of the opinion that there is not sufficient evidence on which to proceed I will have copies made of all the documents and the same transmitted to you, with the suggestion that if in your opinion the facts warrant the matter be presented to the Attorney-General for his consideration.

Very respectfully,

Chief of Field Division.

Nothing further was done, except on different trips to Seattle I have tried to get in communication with Mr. Todd, but he happened to be out of the city every time I was there, and I did not get to talk with him about the case.

On December 18 Mr. Schwartz wrote me [reading]:

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., December 18, 1909.

Mr. A. CHRISTENSEN,
Chief of Field Division, Portland, Oreg.

MY DEAR MR. CHRISTENSEN: You have heretofore been directed to present to the United States attorney, in the event developments warrant, the case of the unlawful abstraction of certain records from the government files in the office of the chief of field division, Seattle, Wash. The general history of this matter is as follows:

September 17, 1909, Chief of Field Division Glavis was, by the Secretary, upon the authority of the President, removed from the service, and he was on that date wired instructions to turn over to you all of the official records in his possession.

September 18 he turned over to you what he represented to be all of the records in his possession.

Subsequent developments show that several hundred letters and files were missing, and their history briefly is as follows:

Some 25 or 30 letters in the files of the Juneau, Alaska, land office had, a few months previously, been transferred therefrom to the division headquarters at Seattle by Special Agent Bowman, and by him left in his grip in the Seattle headquarters office. In checking over this package on September 18 you found some 25 of these letters to be missing.

Senator SUTHERLAND. Is it necessary to read that, Mr. Vertrees? It seems to be a recapitulation.

Mr. VERTREES. It is a recapitulation of everything by Mr. Schwartz.

Mr. CHRISTENSEN. Yes, and then his conclusion.

Mr. VERTREES. Get down to the instructions and conclusion.

Mr. CHRISTENSEN. Yes, sir.

Senator SUTHERLAND. Then the whole thing can go in.

Mr. VERTREES. Yes, I will ask that it all go in.

(The letter is as follows:)

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
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Chief of Field Division, Portland, Oreg.

MY DEAR MR. CHRISTENSEN: You have heretofore been directed to present to the United States attorney, in the event developments warrant, the case of the unlawful abstraction of certain records from the government files in the office of Chief of Field Division, Seattle, Wash. The general history of this matter is as follows:

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September 18 he turned over to you what he represented to be all of the records in his possession.

Subsequent developments show that several hundred letters and files were missing, and their history, briefly, is as follows:

Some twenty-five or thirty letters in the files of the Juneau, Alaska, land office had a few months previously been transferred therefrom to the division headquarters at Seattle by Special Agent Bowman, and by him left in his grip in the Seattle headquarters office. In checking over this package on September 18 you found some 25 of these letters to be missing.

September 20, and after Mr. Glavis had severed his connection with government service, he returned to you one of these missing letters.

On Sunday, September 19, 1909, Glavis and Special Agent Stoner were for a long time closeted in his (Glavis's) rooms—presumably at the Lincoln Hotel—and Mr. Stoner has since displayed a very large amount of ignorance as to what actually transpired during that time. He said, however, to you, in a general way, that Glavis

at that time sorting over a very large number of private papers and in taking thereon certain official papers, which he presumed did not know were in his possession and searched. One month after the disappearance of these records Mr. A. C. Shaw, of the Forest Service, informally returned to you and Mr. Sheridan a number of official records of the Interior Department, with the advice that they had been "inadvertently" by Mr. Glavis sent to the Forester, Washington, D. C., on September 18, being the day he was separated from the service, and directed to turn over the records to your office.

Several days later, in an official letter to you, Mr. Pierce, of the Forest Service, headquarters Portland, Oreg., returned to you an additional number of missing letters, with a similar statement. A few days later you discovered Messrs. Glavis and Shaw at a conference in the Forestry headquarters at Portland, and Mr. Glavis had at that time under his arm a large bundle of official records, and these you secured possession of. "Shortly thereafter Collier's Weekly printed two of the stolen records, and in its second December issue, just out, they print two or three additional of the stolen records, with the further observation that "more is to follow."

You have presented this matter to the United States attorney, but I am not yet advised as to result of the conference. The whereabouts of these stolen records have since developed, by reason of the publications appearing in Collier's. You will advise the United States attorney to present this matter to the next federal grand jury, and I suggest that you at that time cause subpoenas to issue for all of the agents and clerks having knowledge of the transaction, and that you also cause subpoena to issue for Norman E. Hapgood, editor of Collier's Weekly; also for one Connelley, formerly attorney at law in Montana, and at this time on the Collier's staff; also for private secretary of Mr. Hapgood.

I am having investigation made in New York for the purpose of ascertaining the exact names of these last two parties, and will advise you thereof. It is my opinion that the facts as now developed warrant the indictment of Glavis for stealing the records in question, and that the grand jury in this case may develop sufficient evidence to hold the real criminals upon the charge of receiving property stolen from the Government, "knowing the same to be such." If the evidence sifted by the grand jury is such as fairly warrants the holding of Mr. Glavis, it is in my opinion probable that we will then be able to fix the responsibility upon the men higher up—official and unofficial.

Respectfully,

H. H. SCHWARTZ,
Chief of Field Service.

Mr. VERTREES. Now, in point of fact, had extracts from any of those 24 letters appeared in Collier's Weekly during December?

Mr. CHRISTENSEN. There had.

Mr. VERTREES. Had you read them?

Mr. CHRISTENSEN. I had.

Mr. VERTREES. You remember how many?

Mr. CHRISTENSEN. I think there were five in all. One of them was the one that was returned by Mr. Glavis on Monday morning, September 20, the Cunningham letter of January 15.

The CHAIRMAN. Do you offer Collier's in evidence?

Mr. VERTREES. No, sir; I will not offer it. I will offer a portion of it and connect it up with the letters.

Mr. JAMES. Is that from Collier's magazine?

Mr. VERTREES. Collier's Weekly of December 4, 1909.

Mr. BRANDEIS. Are you putting that in evidence?

Mr. VERTREES. No, sir.

The CHAIRMAN. What is the title of the article?

Mr. VERTREES (reading):

HILLES AND HIS RAGE—MR. BALLINGER REPLIES THUS FAR TO THE CRITICISM OF HIM AND HIS DEPARTMENT.

I have no further information relating to our patents, but will have the matter discussed with Judge Ballinger within a few days and will endeavor to get some information out of our titles.

With kindest regards, I am, yours, truly,

(Signed)

CLARENCE CUNNINGHAM.

That letter is found on page 840 of volume 2 and is one of the missing letters. The same number of that publication says:

On September 4, 1908, we find (on the records) that Messrs. Ballinger, Ronald, Battle—

No, it is not quoted there; that refers to the affidavit.

Senator SUTHERLAND. I do not find that letter on page 840.

Mr. VERTREES. It is at the bottom of page 840.

In Collier's Weekly of December 18, on page 9, is an article entitled "Can this be whitewashed also," and we find this reference:

When Mr. Ballinger represented Cunningham, he represented all the Cunningham claims. Not only this, but the record is quick with the evidence of his employment by other Alaska coal claimants at different times—

What letter is that, Mr. Finney?

Mr. GRAHAM. That is at the foot of page 839.

Mr. VERTREES (continuing):

but the record is quick with the evidence of his employment by other Alaska coal claimants at different times. Under date of December 23, 1908, a little over two months before he took office as Secretary of the Interior, Ballinger wrote to the register and receiver of the United States land office at Juneau, Alaska, saying that he represented W. G. Whorf, whose entry was known as coal survey No. 315.

It also says:

On January 7, 1909, less than sixty days before Ballinger became Secretary of the Interior, M. A. Green, who represents another Alaska coal syndicate, wrote to John W. Dudley, register of the Juneau, Alaska, land office:

"I submitted this scrip to Judge Ballinger as my lawyer and he has approved the same, saying that it was regular in every way, so I bought it and paid for it and am sending it forward to you at this time."

That is an extract from a letter which appears on page 843 of the record.

It also says, this paper does:

Under date of April 19, 1909, six weeks after Ballinger took the oath of office as Secretary of the Interior, Walter M. French, of the law firm of Allen & French, of Seattle wrote John W. Dudley, register of the Juneau land office:

"Mr. Harriman, whom I represent, has on several occasions taken the matter of mine up with Judge Ballinger, whose firm represented the purchasers, and with Mr. Hartline, and the parties have at all times seemed to be in perfect accord."

Mr. MCCALL. Mr. Vertrees, did you say this was after he became Secretary? You read it "six weeks after."

Mr. VERTREES. The paper states that; "six weeks after." "Under date of April 19, 1909, six weeks after Ballinger took the oath of office as Secretary of the Interior, Walter M. French, of the law firm of Allen & French"—that is, the publication.

The CHAIRMAN. That is the letter of April 19, is it not?

Mr. VERTREES. Yes, sir; found on page—

The CHAIRMAN. Page 842.

Mr. VERTREES. Yes; page 842.

You saw it at this time, or shortly after the publication of this Collier's Weekly, did you not?

Mr. CHRISTENSEN. I did.

The CHAIRMAN. What is the date of that issue of Collier's?

Mr. VERTREES. December 18, 1909.

Well, Mr. Christensen, after that communication from Mr. Schwartz and your communication to the Attorney-General, or rather the district attorney, laying the matter all before him, what next happened with reference to these papers?

Mr. CHRISTENSEN. After I received his letter of December 18—
Mr. BRANDEIS. Whose letter?

Mr. CHRISTENSEN. Mr. Schwartz's letter of December 18—I took the matter up with the United States Attorney—

The CHAIRMAN. A little louder, please.

Mr. CHRISTENSEN. I say I took the matter up with the United States attorney. He had not yet taken any action on my letter of November 30, and I wrote Schwartz to that effect on December 24, and I advised him that I was in Seattle the week before, but Mr. Todd was absent from the city, but I would take it up with him the next time I was in Seattle.

Mr. VERTREES. We will ask that that go in.

The CHAIRMAN. It is admitted.

PORTLAND, ORE., Dec. 24, 1909.

on. H. H. SCHWARTZ,

Chief of Field Service, Washington, D. C.

MY DEAR Mr. SCHWARTZ. Your letter of the 18th inst., relative to presenting the matter of the lost papers to the federal grand jury, at hand, and in reply thereto I have advise you that shortly after the matter was presented to the United States attorney, had a conference with him, in which he indicated that he was of the opinion that there was not sufficient evidence on which to secure a conviction. I at that time called his attention to the article in Collier's, to which you have referred, and he then promised to take the matter under further consideration.

I was in Seattle last week, but Mr. Todd was absent from the city and would not return for several days. I expect to be in Seattle next Monday, when I will call the recent article in Collier's to his attention and shall insist upon the matter being presented to the next grand jury. He informed me at our first conference that the grand jury would probably not meet until next May, but if the case was of sufficient importance he might call an extra session. I shall insist upon this being done.

As soon as I have had my conference with him, I shall advise you further in the premises.

I would be pleased to be furnished with any further information you may have concerning the case, in order that I may show the United States attorney that there is absolutely no doubt as to the guilty parties.

Very respectfully,

Chief of Field Division.

Mr. VERTREES. Then proceed. What next?

Mr. CHRISTENSEN. Then I had a conference with him on September 27 and showed him this letter from Schwartz of December 18, and he suggested that I furnish him with a copy of Schwartz's letter, and also such additional information as I could which would assist him in arriving at a conclusion. Then I wrote him, on December 28, quite a lengthy letter, in which I set forth the evidence as disclosed by the record and made certain recommendations.

The CHAIRMAN. Is that it which you hold in your hand?

Mr. CHRISTENSEN. Yes, sir.

The CHAIRMAN. There is no need to read it.

Mr. VERTREES. No, in view of what has gone before; but I will ask that it go into the record. The date of that letter is December 25, 1909.

The CHAIRMAN. That is your letter to Mr. Todd, transmitting the papers?

Mr. CHRISTENSEN. I might read one paragraph out of it [reading]:

It is especially desired that this case be presented to the grand jury without delay, in order that the missing papers may be located prior to the conclusion of the Cunningham hearing, for they may contain evidence which will result in the cancellation of the entries.

(The letter is as follows:)

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Seattle, Washington, December 28, 1909.

MR. ELMER E. TODD,
United States Attorney, Seattle, Wash.

SIR: Referring to our conference yesterday relative to the loss of certain records from the government files in the office of the chief of the seventeenth field division, Seattle, Wash., I have the honor to invite your attention particularly to the following facts which appear of record. You have heretofore been furnished with evidence which has been secured during the investigation of the matter, showing that among a portion of the lost letters were some twenty-two letters secured by Special Agent Bowman from the Juneau, Alaska, land office, and that one of said letters was subsequently returned by Mr. Glavis (see paragraph 1 of schedule of documents forwarded to you by my letter of November 30, 1909). In Collier's Weekly for December 4, 1909, reference is made to said letter, which was one from Clarence Cunningham, dated January 15, 1908, to the register and receiver of the Juneau office. This letter has been accounted for. The letter of March 14, 1908, mentioned in this same article, from said Cunningham to the register and receiver, has not been accounted for, and has never been in my possession.

Again, in said weekly for December 18, 1909, reference is made to a letter dated December 23, 1908, from Ballinger to the register and receiver at Juneau, which has not been in my possession. The same also applies to letters dated January 7, 1909, from M. A. Green to John W. Dudley, register of the Juneau office, and one dated April 19, 1909, from Walter M. French to said Dudley. All of these letters are mentioned in my letter to Glavis, dated September 20, 1909, in which I requested him to advise me of the whereabouts of said letters, and twenty others.

It has been shown to you, by evidence heretofore submitted, that the only person who could logically abstract these letters from Bowman's satchel was Mr. Glavis; therefore, if these original letters are now in the possession of Collier's, necessarily they must have been unlawfully extracted therefrom by Mr. Glavis, and are now in the possession of Collier's, with the guilty knowledge of the fact that they were unlawfully removed from this office.

I attach herewith a copy of my letter, marked Exhibit "A," to Glavis, dated September 19, 1909, in which I made demand upon him for certain papers, and in which I threatened him with both criminal and civil prosecution in case they were not promptly delivered to me. This letter was written after my consultation with you over the phone on Saturday evening, September 18th, and again at the suggestion of your assistant, Mr. Hutson, on Sunday, September 19th.

I also attach a copy of my letter of November 4, 1909, marked Exhibit "B," to Honorable H. H. Schwartz, chief of field service, Washington, D. C., in which I set forth certain record facts material to the case.

On September 18, 1909, the Commissioner of the General Land Office wired me as follows:

CA-WASHINGTON, D. C., Sept., 16, '09

A. CHRISTENSEN,
Chief Field Division, U. S. Local Land Office, Seattle, Wn.

You will take charge of all records and files in the office of seventeenth field division and prepare receipts in triplicate, giving Mr. Glavis one copy, retaining one for yourself, and forwarding one to this office; exhibit this telegram to Glavis, and direct him to aid you in the transfer. You may employ necessary stenographer's assistance, and you are authorized to require the assistance of any agent from Portland; acknowledge receipt hereof by wire.

DENNET, Comr

9.30 a. m.

In accordance with said telegram Glavis should have turned over to me all of the records of the office, but before signing for the records it was discovered that he had a large number of the papers in his room at the Lincoln Hotel, some of which were returned to me after my threat to prosecute him, and others, it appears, were either retained by him or were on September 18, 1909, forwarded to the Forester at Washington, D. C.

Your attention is also invited to the papers mentioned in paragraph two of the schedule of documents submitted to you on November 30th relative to the papers returned to Mr. Sheridan and myself by A. C. Shaw, of the Forest Service.

You will perceive from the papers heretofore submitted to you that Glavis deliberately lied to me on the following occasions:

First. On September 18th he took with him a package of papers which are mentioned in my affidavit and which were part of the records of the office, at the same time telling me that they were his personal papers.

Second. When he told me, on Monday, September 20th, that he had turned over to me all of the records of the office, when, as a matter of fact, he, on September 18th, had awarded a portion thereof to the Forester at Washington.

Third. He also knew at that time that he had not furnished me with the copies of his report to the President, which were paid for out of his official funds.

Fourth. He also deliberately lied to me when he told me, in response to my letter of September 20th, that none of the letters mentioned therein were in his possession, and that they would probably be found among the records of the office.

The following is an extract from a confidential letter from Mr. Schwartz to myself, dated December 18, 1909, which, very briefly and accurately, sets forth the facts in the case and substantiates the statements made above by myself:

"You have heretofore been directed to present to the United States attorney, in the event developments warrant, the case of the unlawful abstraction of certain records from the government files in the office of chief of field division, Seattle, Washington. The general history of this matter is as follows:

"September 17, 1909, Chief of Field Division Glavis was, by the Secretary, upon the authority of the President, removed from the service, and he was on that date wired instructions to turn over to you all of the official records in his possession.

"September 18 he turned over to you what he represented to be all of the records in his possession.

"Subsequent developments show that several hundred letters and files were missing, and their history, briefly, is as follows:

"Some 25 or 30 letters in the files of the Juneau, Alaska, land office had a few months previously been transferred therefrom to the division headquarters at Seattle by Special Agent Bowman, and by him left in his grip in the Seattle headquarters office. On checking over this package on September 18 you found some 25 of these letters to be missing.

"September 20, and after Mr. Glavis had severed his connection with government service, he returned to you one of these missing letters.

"On Sunday, September 19, 1909, Glavis and Special Agent Stoner were for a long time closeted in his (Glavis) rooms, presumably at the Lincoln Hotel, and Mr. Stoner, since displayed a very large amount of ignorance as to what actually transpired during that time. He said, however, to you, in a general way, that Glavis was at that time sorting over a very large number of private papers and in taking therefrom certain official papers, which he presumably did not know were in his possession until searched. The month after the disappearance of these records Mr. A. C. Shaw, of the Forest Service, informally returned to you and Mr. Sheridan a number of official records of the Interior Department, with the advice that they had been 'inadvertently' by Mr. Glavis sent to the Forester, Washington, D. C., on September 18, being the day he was separated from the service and directed to turn over the records to yourself. Several days later in an official letter to you, Mr. Pierce, of the Forest Service, headquarters Portland, Oregon, returned to you an additional number of missing letters, with a similar statement. A few days later you discovered Messrs. Glavis and Shaw in conference in the forestry headquarters at Portland, and Mr. Glavis had at that time under his arm a large bundle of official records and these you secured possession of. Shortly thereafter Collier's Weekly printed two of the stolen records, and in their second December issue, just out, they print two or three additional of the stolen records, with the further observation that 'more is to follow.'

"You have presented this matter to the United States attorney, but I am not yet advised as to result of the conference. The whereabouts of these stolen records have been since developed by reason of the publications appearing in Collier's. You will ask the United States attorney to present this matter to the next federal grand jury; and I suggest that you at that time cause subpoenas to issue for all of the agents and clerks having knowledge of the transaction, and that you also cause subpoena to issue for Norman E. Hapgood, editor of Collier's Weekly; also for one Connelley, formerly attorney at law in Montana and at this time on the Collier's staff; also for private secretary of Mr. Hapgood.

"I am having investigation made in New York for the purpose of ascertaining the correct names of these last two parties and will advise you thereof."

It is shown by the facts heretofore submitted to you and the facts stated by Mr. Schwartz in the above extract that there is sufficient evidence on which to warrant an indictment of Glavis for stealing the records in question and that the grand jury in this case may develop sufficient evidence to hold the real criminals upon the charge

In view, however, of the importance of the matter, because of the public interest in the controversy involved, the matter is respectfully referred to you that, if any action is deemed advisable in the matter, I can act directly under your instructions. Before any action is taken in the matter, I suggest a personal conference—you might have all the papers before you which have been submitted to me. The next regular grand jury in this district will be in Seattle, commencing the first Tuesday in May, 1910, but one can be called at the beginning of the next term in Tacoma, which is the first day of February.

Respectfully,

United States Attorney.

Mr. VERTREES. At this time these letters had not been found, had they?

Mr. CHRISTENSEN. No, sir.

Mr. VERTREES. Were you acquainted with the result of the Attorney-General's opinion, or did he advise you what it was?

Mr. CHRISTENSEN. Mr. Todd informed me that the Attorney-General agreed with Mr. Todd that no further action should be taken at this time.

Mr. MADISON. Let me ask, for the purpose of clearing my mind up on that matter. Were you trying to secure indictments against Glavis for turning those letters or copies of them over to the Forestry Service?

Mr. CHRISTENSEN. No, sir; our idea of it was that these original letters had been sent to Collier's, the ones that we saw printed in Collier's, and we went on the assumption that they were in the possession of Collier's, and therefore it was a violation of a statute, and he was subject to indictment.

Mr. GRAHAM. When you say "our idea," whom do you mean beside yourself?

Mr. CHRISTENSEN. Mr. Sheridan and Mr. Pugh.

Mr. GRAHAM. And Mr. Schwartz?

Mr. CHRISTENSEN. Yes, sir.

Mr. MADISON. Why would Mr. Todd give an opinion of that kind to you, when as a matter of fact you were trying to have Glavis indicted for turning these things over to Collier's—that would certainly be taking them out of the possession of the United States, would it not?

Mr. VERTREES. Suppose you read Mr. Todd's opinion.

Mr. MADISON. No; I just wanted the matter cleared up.

Mr. VERTREES. Then suppose we read the opinion of the district attorney.

Mr. GRAHAM. Giving a copy to Collier's would not be taking the papers out of the possession of the United States.

Mr. MADISON. But the idea that these gentlemen had was that the originals were with Collier's; is that right?

Mr. CHRISTENSEN. Yes, sir.

Mr. MADISON. That would be taking them out of the possession of the United States, wouldn't it?

Mr. GRAHAM. Well, I doubt it, if they had certified copies.

Mr. MADISON. I merely wanted to get the straight of it.

PORTLAND, OREGON, November 4, 1909.

MR. H. H. SCHWARTZ,
Chief of Field Service, Washington, D. C.

SIR: Referring further to your telegram of October 8, 1909, to Special Agent Sheridan, which you suggested that if he saw Bowman he question him concerning the Cunningham letters, and other telegrams and correspondence between yourself, Mr. Coler, Mr. Sheridan and myself, and especially to the letter from Mr. Sheridan of October 1, 1909, and to your letter of October 23, 1909, to Mr. Sheridan, in which you make certain suggestions with a view to ascertaining what became of the letters in question, have the honor to advise you that the first knowledge I had of these missing letters was when it was called to my attention by Special Agent Robert F. Maguire, whom I called to Seattle to assist me in taking over the records from Mr. Glavis. You will recall that I called this to your attention when you were in Seattle, which fact I have already mentioned in my letter to you of October 19, 1909.

It appears that this large envelope containing these letters from the Juneau, Alaska, land office was taken from Bowman's grip by Mr. Glavis and given to Miss Schwinnen, whom I employed temporarily to assist in making record of the cases. All that Miss Schwinnen did with these letters was to make a copy of the memorandum of the letters which was in the envelope and which are marked as pages 125 and 126 of my receipt to Glavis for the records of the office. As soon as the memorandum had been copied by Miss Schwinnen, I handed it and the envelope to Mr. Maguire to check them up and see whether or not all of the letters mentioned in the said memorandum were there. As will be seen from my letter to Mr. Glavis, dated September 20, 1909 (page 124 of the receipt), there were 24 letters and telegrams missing. The telegram from Clarence Cunningham, of January 15, 1908, was subsequently located. Mr. Maguire will make affidavit to the effect that the letters mentioned in my letter to Mr. Glavis of September 20 were missing from the envelope when he checked them with the memorandum enclosed therewith, which affidavit I will secure and forward to you.

As I informed you and also as Mr. Sheridan has stated to you in his letter of October 1, 1909, Mr. Glavis replied to the letter orally, stating that he supposed that the papers were somewhere about the office and that he did not have them in his possession.

Miss Shartell, in her letter of October 29, 1909, addressed to Mr. Sheridan, a copy of which is hereto attached, states that she had no knowledge of the original letters said to have been brought by Mr. Bowman from the land office at Juneau until the matter was called to her attention a short time ago.

It is certain that these letters were received from the land office by Mr. Bowman. It is certain that they are not in the office at Seattle, Washington. There is no doubt whatever but that they were not in the envelope on the date that they were checked up by Mr. Maguire. Therefore, either Mr. Bowman or Mr. Glavis is responsible for their disappearance. Mr. Bowman states that he has not any of the Cunningham letters in his possession; that he never gave any to Mr. Glavis; and that the last he saw of them was when they were left in his grip in the office in Seattle. He also states that he told Mr. Glavis that these letters had been left there in his grip.

This would seem to eliminate all other parties who might have handled these letters, except Glavis. He is the one responsible, and he is the one that should be looked to for them. If he is purposely and willfully concealing them, he is guilty of the embezzlement of government property and should be immediately proceeded against under the act of March 3, 1875, 18 Stat. 479. In view of what I have since learned concerning the acts of Mr. Glavis relative to forwarding to the Forester at Washington, D. C., of papers which were material to the successful prosecution of the cases pending in the Alaska division, and especially those papers relating to the Cunningham cases which are mentioned in Mr. Sheridan's letter of October 23, 1909, to A. C. Shaw, of the Forest Service, and those mentioned in Shaw's reply to Mr. Sheridan of October 25, 1909, it would seem to be little doubt but that the missing papers are now in possession of Mr. Glavis or are concealed somewhere by him. The memorandum attached to Mr. Sheridan's letter to Mr. Shaw on October 23, 1909, shows that Glavis had papers in his possession not only relating to the Alaska coal cases, but also relating to a number of cases pending in the western district of Washington, and also concerning other miscellaneous matters which were properly files belonging to the General Land Office and were unlawfully taken from the office at Seattle.

You will recall upon your visit to Seattle that I told you that I was about to procure a search warrant in order to search the room of Mr. Glavis with a view to ascertaining what government property he had retained, but that I had, in view of the possible unpleasant notoriety in connection therewith, refrained from doing so. You also stated that you thought it would not be advisable, for the reason that Mr. Glavis would no doubt immediately go to the newspapers and make it appear that the

In view, however, of the importance of the matter, because of the public interest in the controversy involved, the matter is respectfully referred to you that, if any action is deemed advisable in the matter, I can act directly under your instructions. Before any action is taken in the matter, I suggest a personal conference—you might have all the papers before you which have been submitted to me. The next regular grand jury in this district will be in Seattle, commencing the first Tuesday in May, 1910, but one can be called at the beginning of the next term in Tacoma, which is the first day of February.

Respectfully,

United States Attorney.

Mr. VERTREES. At this time these letters had not been found, had they?

Mr. CHRISTENSEN. No, sir.

Mr. VERTREES. Were you acquainted with the result of the Attorney-General's opinion, or did he advise you what it was?

Mr. CHRISTENSEN. Mr. Todd informed me that the Attorney-General agreed with Mr. Todd that no further action should be taken at this time.

Mr. MADISON. Let me ask, for the purpose of clearing my mind up on that matter. Were you trying to secure indictments against Glavis for turning those letters or copies of them over to the Forestry Service?

Mr. CHRISTENSEN. No, sir; our idea of it was that these original letters had been sent to Collier's, the ones that we saw printed in Collier's, and we went on the assumption that they were in the possession of Collier's, and therefore it was a violation of a statute, and he was subject to indictment.

Mr. GRAHAM. When you say "our idea," whom do you mean beside yourself?

Mr. CHRISTENSEN. Mr. Sheridan and Mr. Pugh.

Mr. GRAHAM. And Mr. Schwartz?

Mr. CHRISTENSEN. Yes, sir.

Mr. MADISON. Why would Mr. Todd give an opinion of that kind to you, when as a matter of fact you were trying to have Glavis indicted for turning these things over to Collier's—that would certainly be taking them out of the possession of the United States, would it not?

Mr. VERTREES. Suppose you read Mr. Todd's opinion.

Mr. MADISON. No; I just wanted the matter cleared up.

Mr. VERTREES. Then suppose we read the opinion of the district attorney.

Mr. GRAHAM. Giving a copy to Collier's would not be taking the papers out of the possession of the United States.

Mr. MADISON. But the idea that these gentlemen had was that the originals were with Collier's; is that right?

Mr. CHRISTENSEN. Yes, sir.

Mr. MADISON. That would be taking them out of the possession of the United States, wouldn't it?

Mr. GRAHAM. Well, I doubt it, if they had certified copies.

Mr. MADISON. I merely wanted to get the straight of it.

SEATTLE, WASH., November 1, 1909.

T. A. CHRISTENSEN,
Chief of Field Division, Seattle, Wash.

Sir: Referring to your verbal request of this date that I write you a letter in relation to my visits with Mr. L. R. Glavis, former chief of this division, to his rooms at the Lincoln Hotel, this city, on September 16th and September 18, 1909.

I have to say that on September 16, I accompanied Mr. Glavis at his request to his rooms at the Lincoln Hotel and remained there about one hour. While there Mr. Glavis was engaged in segregating various official papers from his private papers; one of the official papers he handed over to me to look at, others he merely put in a pile and afterward they were all tied in bundles and brought by us to this office and handed over to you.

On September 18, I again accompanied Mr. Glavis, at his request, to his rooms at the Lincoln Hotel and remained there about two hours; as on the former visit, Mr. Glavis segregated some other official papers from his private papers and again handed me various papers to look at; on this occasion, as on the previous one, all the official papers seen by me were tied in bundles and brought by us to this office.

I am unable to recall the exact nature of all the papers seen by me. I do recall, however, that, as far as I know, all the affidavits and other papers relating to the investigation of the Green, Hunt, and Feed groups of coal claims were among the papers, and it was with these papers that I had most to do, looking them over and putting them in order.

There were other papers relating to Oregon matters, the nature of which I am unable to state, except, as I recall it now, Mr. Glavis said they referred to T. B. Neuhausen's accounts and the Long case.

I only saw one paper in any way relating to the Cunningham coal cases; that was a letter written by Clarence Cunningham to the register of the land office at Juneau, Alaska.

All of the official papers seen by me in Mr. Glavis's rooms on both my visits there were brought by us from there to this office, and if he has retained any official papers in his possession, they were not among those seen by me.

I do not know what object Mr. Glavis had in requesting me to visit his rooms except to assist him in conveying the bundles of papers to this office.

Very respectfully,

S. N. STONER,
Special Agent, G. L. O.

Senator SUTHERLAND. Are those articles in Collier's, from which you have been reading, and which contain extracts from those letters, are they articles under anybody's name, or signed by anybody?

Mr. VERTREES. I think they do purport to be by—no, sir, there is no name signed—I will read the headings of both pieces in full [reading]: "Achilles and his rage;" and the next one is, "Can this be whitewashed also?" No, there is no name to either one, so they appear, of course, as publications of the editor. Well, what did Mr. Todd reply?

Mr. CHRISTENSEN. Mr. Todd prepared a letter to the Attorney-General in which, I believe, he came to the conclusion that there was not sufficient evidence on which to warrant or rather secure indictment.

Mr. BRANDEIS. What was the date of that letter?

Mr. CHRISTENSEN. December 30 he wrote the Attorney-General.

The CHAIRMAN. What letter is that?

Mr. VERTREES. Have you a copy of that letter?

Mr. CHRISTENSEN. Yes, sir.

Mr. VERTREES. I would like to put that in.

The CHAIRMAN. Is that the letter to the Attorney-General from Mr. Todd?

Mr. VERTREES. From Mr. Todd. After these letters had been submitted to Mr. Todd, Mr. Todd concluded there was not sufficient

In view, however, of the importance of the matter, because of the public interest in the controversy involved, the matter is respectfully referred to you that, if any action is deemed advisable in the matter, I can act directly under your instructions. Before any action is taken in the matter, I suggest a personal conference—you might have all the papers before you which have been submitted to me. The next regular grand jury in this district will be in Seattle, commencing the first Tuesday in May, 1910, but one can be called at the beginning of the next term in Tacoma, which is the first day of February.

Respectfully,

United States Attorney.

Mr. VERTREES. At this time these letters had not been found, had they?

Mr. CHRISTENSEN. No, sir.

Mr. VERTREES. Were you acquainted with the result of the Attorney-General's opinion, or did he advise you what it was?

Mr. CHRISTENSEN. Mr. Todd informed me that the Attorney-General agreed with Mr. Todd that no further action should be taken at this time.

Mr. MADISON. Let me ask, for the purpose of clearing my mind up on that matter. Were you trying to secure indictments against Glavis for turning those letters or copies of them over to the Forestry Service?

Mr. CHRISTENSEN. No, sir; our idea of it was that these original letters had been sent to Collier's, the ones that we saw printed in Collier's, and we went on the assumption that they were in the possession of Collier's, and therefore it was a violation of a statute, and he was subject to indictment.

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Mr. CHRISTENSEN. Yes, sir.

Mr. MADISON. Why would Mr. Todd give an opinion of that kind to you, when as a matter of fact you were trying to have Glavis indicted for turning these things over to Collier's—that would certainly be taking them out of the possession of the United States, would it not?

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Mr. MADISON. That would be taking them out of the possession of the United States, wouldn't it?

Mr. GRAHAM. Well, I doubt it, if they had certified copies.

Mr. MADISON. I merely wanted to get the straight of it.

There were many other records and papers missing from the office at that time besides those mentioned, though Mr. Christensen did not know what the others were at that time. He made demand, however, on Mr. Glavis on September 20th for the return of these communications. Mr. Glavis that same day returned to the office the letter from Clarence Cunningham dated January 15, 1908, saying that he had found it among his private papers, but denied possession of any of the other of these communications. S. N. Stoner, another special agent of the G. L. O., was with Mr. Glavis on the 19th in his room in the Lincoln Hotel, assisting him in sorting his private papers, and he states that the only official communication he saw was a letter written by Clarence Cunningham to the Juneau land office, dated January 15th, 1908. That was probably the letter which Mr. Glavis returned to the office of the chief of the field division the next day. Two other of these communications have since been accounted for—the letter from Archie W. Shields, dated August 24, 1907, and the letter from A. N. Wheatley, dated November 8, 1907. The other twenty-one of these communications have never been accounted for nor returned to the office of the chief of the field division at Seattle or to the land office at Juneau.

Of the various other papers relative to matters other than the Cunningham coal claims, which were missing from the office of the chief of the field division at Seattle when Mr. Glavis severed his connection with the service, all have been returned as follows:

On October 21, 1909, Mr. A. C. Sifaw, assistant law officer of the Forest Service, delivered to Mr. James M. Sheridan, the special agent who succeeded Mr. Glavis in the Cunningham cases, a package of these papers with the admission that they had been delivered to the Forest Service by Mr. Glavis. On November 5th, in Portland Oregon, Mr. Glavis delivered to Mr. Christensen other of these papers accompanied by the following letter:

"DEAR SIR: In looking through my personal letter files, I discovered some letters and copies of letters that might be considered semiofficial, and I therefore deliver them to you. (Signed) L. R. Glavis."

On November 8th Chas. R. Pierce, district law officer of the Forestry Service, delivered to Mr. Christensen a package of these missing papers accompanied by the following letter:

"I inclose some copies of original letters which were among some typewritten copies of letters transmitted to the Forest Service by Mr. Glavis on September 18."

The only papers now missing are twenty-one of the communications to the Juneau land office which were receipted for by Mr. Bowman, brought to Seattle and left in the office of Mr. Glavis, as is noted above. Certain of these communications must have come into the possession of Collier's Weekly, for in the different articles of that magazine directed against the Department of the Interior, certain of these letters have been quoted, among them the letter from M. A. Green, dated January 17, 1909, the letter from Walter M. French, dated April 18, 1909, and the letter from Judge Ballinger, dated December 23, 1908. Mr. Bowman's affidavit shows that he left these communications in the office of the chief of the field division at Seattle, on or about August 10th, and so far as he knows they were still there when he left for the East on August 25th, but they were not there when he returned to Seattle November 2nd. They could not be found on September 18th, when the office was transferred to Mr. Christensen. All of the other persons connected with that office at that time claim that they never saw these communications nor knew of their existence. The evidence at hand is not sufficient to show that Mr. Glavis took them, but I have no doubt that such was the case, and that he obtained possession of them by virtue of his position as chief of the field division, and therefore if he converted them to his own use he was guilty of embezzlement within the meaning of the act of March 3, 1875. I think it altogether likely, however, that Mr. Glavis sent these papers to officers of the Forestry Service in Washington, as it appears that he sent other papers about the same time; and if that is the case, he did not convert them to his own use, and committed no crime under the United States statutes.

As to the suggestion of Mr. Schwartz, that the editor of Colliers and other persons connected with that paper be subpoenaed before the grand jury: I do not think any evidence could be secured in that way upon which to base indictments. It is altogether probable that Colliers only received copies of these papers, the originals of which may be still in the possession of the officers of the United States, though not connected with the General Land Office. I am of the opinion that there is no reasonable prospect that an investigation of the facts of this case by the grand jury would result in the conviction of Mr. Glavis or anyone else of any crime within the meaning of the statutes of the United States, and, in my opinion, unless there is reasonable hope of conviction an investigation, even if resulting in an indictment, would be more than useless.

In view, however, of the importance of the matter, because of the public interest in the controversy involved, the matter is respectfully referred to you that, if any action is deemed advisable in the matter, I can act directly under your instructions. Before any action is taken in the matter, I suggest a personal conference—you might have all the papers before you which have been submitted to me. The next regular grand jury in this district will be in Seattle, commencing the first Tuesday in May, 1910, but one can be called at the beginning of the next term in Tacoma, which is the first day of February.

Respectfully,

United States Attorney.

Mr. VERTREES. At this time these letters had not been found, had they?

Mr. CHRISTENSEN. No, sir.

Mr. VERTREES. Were you acquainted with the result of the Attorney-General's opinion, or did he advise you what it was?

Mr. CHRISTENSEN. Mr. Todd informed me that the Attorney-General agreed with Mr. Todd that no further action should be taken at this time.

Mr. MADISON. Let me ask, for the purpose of clearing my mind up on that matter. Were you trying to secure indictments against Glavis for turning those letters or copies of them over to the Forestry Service?

Mr. CHRISTENSEN. No, sir; our idea of it was that these original letters had been sent to Collier's, the ones that we saw printed in Collier's, and we went on the assumption that they were in the possession of Collier's, and therefore it was a violation of a statute, and he was subject to indictment.

Mr. GRAHAM. When you say "our idea," whom do you mean beside yourself?

Mr. CHRISTENSEN. Mr. Sheridan and Mr. Pugh.

Mr. GRAHAM. And Mr. Schwartz?

Mr. CHRISTENSEN. Yes, sir.

Mr. MADISON. Why would Mr. Todd give an opinion of that kind to you, when as a matter of fact you were trying to have Glavis indicted for turning these things over to Collier's—that would certainly be taking them out of the possession of the United States, would it not?

Mr. VERTREES. Suppose you read Mr. Todd's opinion.

Mr. MADISON. No; I just wanted the matter cleared up.

Mr. VERTREES. Then suppose we read the opinion of the district attorney.

Mr. GRAHAM. Giving a copy to Collier's would not be taking the papers out of the possession of the United States.

Mr. MADISON. But the idea that these gentlemen had was that the originals were with Collier's; is that right?

Mr. CHRISTENSEN. Yes, sir.

Mr. MADISON. That would be taking them out of the possession of the United States, wouldn't it?

Mr. GRAHAM. Well, I doubt it, if they had certified copies.

Mr. MADISON. I merely wanted to get the straight of it.

Mr. FINNEY [reading]:

DECEMBER 30, 1909.

The ATTORNEY-GENERAL,
Washington, D. C.

SIR: I am in receipt of a letter from A. Christensen, chief of the seventeenth field division of the General Land Office, at Seattle, Wash., a copy of which I herewith inclose—

Mr. MADISON. I want to be excused. I have just received word that they are voting on the battle-ship question in the House, and I think some of these Members would like to be over there. I beg pardon, Mr. Vertrees, for asking you to begin and then leaving before it is finished.

Mr. FINNEY. Shall I continue to read, Mr. Chairman?

The CHAIRMAN. No, I do not care, unless the attorneys insist on it. Do you insist on having it read, Mr. Vertrees?

Mr. VERTREES. No, sir.

The CHAIRMAN. Very well, it will go into the record. (The letter appears at another place in to-day's record.)

Mr. VERTREES. Now then, if the Attorney-General advises that he did not think—

Mr. BRANDEIS. Have we a copy of the Attorney-General's letter; is that on file?

Mr. CHRISTENSEN. No, sir.

Mr. BRANDEIS. Have you a copy of that?

Mr. CHRISTENSEN. I have not seen it, I don't think there was. I think he just wrote back a letter of concurrence—I have that information.

Mr. VERTREES. Did he ever write back?

Mr. CHRISTENSEN. He wrote to Mr. Todd.

Mr. VERTREES. Mr. Todd, I think, on the stand, said that the Attorney-General concurred in his views.

Mr. BRANDEIS. Will you get that, Mr. Vertrees?

Mr. VERTREES. Yes, sir. Now, then, what was the date or time when you were informed by the Attorney-General that he did not think a prosecution could be sustained?

Mr. CHRISTENSEN. I do not remember. Some time during the month of January, I think.

Mr. VERTREES. Did you cease after that to make any effort in the direction of finding these papers?

Mr. CHRISTENSEN. I did.

Mr. VERTREES. Now, what next happened with reference to that?

Mr. CHRISTENSEN. There are some more letters here—

Mr. VERTREES. What are those, Mr. Christensen?

Mr. CHRISTENSEN. They are other efforts.

Mr. VERTREES. Further efforts on your part?

Mr. CHRISTENSEN. Yes, sir.

Mr. VERTREES. What is the general nature of those, without reading all of them?

Mr. CHRISTENSEN. One is a letter from Mr. Schwartz; it gives the names and addresses of witnesses to be subpoenaed in New York.

The CHAIRMAN. Please state that again. What is the substance of it?

Mr. VERTREES. I will just read it. It is a very brief letter.

[Personal.]

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., December 22, 1909.

Mr. A. CHRISTENSEN,
Chief of Field Division, Portland, Oregon.

SIR: The additional information promised you in the matter of the investigation of stolen records, Seattle office, is as follows: Miss Helen Simons, private secretary to Norman E. Hapgood, New York City; T. P. Connolly, care of Collier's, New York City; Robert J. Collier, publisher, New York City; and Norman E. Hapgood, editor of Collier's, New York City.

Respectfully,

H. H. SCHWARTZ,
Chief of Field Service

What does that mean, Mr. Christensen? Does that mean that they should be summoned, or the names of persons he desired to be summoned?

Mr. CHRISTENSEN. That is the names of persons that he suggested be summoned in order to locate the original letters, if possible.

Mr. VERTREES. I have here what purports to be a copy of a letter from you, dated Portland, Oreg., December 30, 1909, to Mr. Schwartz, in which you advise him that you had a conference with Mr. Todd and exhibited to him your personal letter [reading]:

PORTLAND, OREGON, December 30, 1909.

Hon. H. H. SCHWARTZ,
Chief of Field Service, Washington, D. C.

SIR: Referring further to your letter of the 18th inst. relative to the stolen records from the Government's files of the office of the chief of the 17th field division, at Seattle, Washington, I have the honor to advise that on Monday, December 27th, I had a conference with the United States attorney, E. E. Todd. I exhibited to him your personal letter to me, and he requested that I furnish him with a copy thereof. He stated that he was not willing to accept the responsibility of subpoenaing Norman E. Hapgood and others, but that he would take the matter up with the Attorney General immediately.

In order that the matter might be placed before him in a more concrete form, I wrote him a letter on December 28th, outlining the more essential features of the case, a copy of which is attached hereto.

Mr. Todd is of the opinion that it is not a violation of the statute for a government employee to deliberately steal or take from the files of one bureau of the Government official records and deliver them to another bureau. He is also of the opinion that the lost or stolen records were taken by Mr. Glavis on the date he left the service, namely, September 18th, 1909, and were forwarded to the Forester at Washington, D. C., who no doubt has been furnishing Collier's either with the originals of these letters or copies thereof.

After I delivered this letter to Mr. Todd yesterday, I had another conference with him, and after he had read the papers over, he appeared more confident of being able to secure the indictment, and possibly the conviction of the parties responsible for the loss of the records.

Mr. Todd is also of the opinion that if we should fail in securing the indictment of Glavis or secure his indictment and not his conviction, it would probably be the worse thing that could happen to the present administration, as it would then be claimed by the muckraking magazines and papers that the department is endeavoring to persecute Glavis. He does not seem to desire to accept the responsibility of presenting the case without first securing authority from the Attorney-General. He stated, however, that if the Attorney-General gave him authority, he would see that a grand jury was called during the month of February to inquire into the matter.

I would suggest that as soon as Mr. Todd's letter is received by the Attorney-General that you confer with him and show to him wherein no one but Glavis could have stolen these records and that he must be responsible for their loss; and, as indicated by you in your letter to me of December 18th, the parties who received these letters knowing them to have been stolen from the Government are also guilty of a violation of the act and should be prosecuted.

From the time I commenced to take over the records until the present time, I have been convinced that Glavis has stolen these records, and had it not been for the fact

that he would immediately have jumped into the newspapers, I would have searched his room on Sunday or Monday, September 19th or 20th. Had I known as much then as I do now, I should have taken that action regardless of what notoriety it would have caused, as I would have been acting only in the interests of the Government. It is certain that these records have disappeared; it is also certain that no one but Glavis could have secured them. There is, therefore, no doubt in my mind whatever but that he can be convicted as soon as all of the facts are presented.

Very respectfully,

Chief of Field Division.

Mr. VERTREES. Here is your letter—I do not think it is necessary to read it—of December 30 to Mr. Todd.

The CHAIRMAN. That is admitted in evidence.

(The letter referred to is as follows:)

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Portland, Oreg., December 30, 1909.

Hon. E. E. TODD,
United States Attorney, Seattle, Wash.

SIR: Referring to my letter to you of the 28th instant, relative to the matter of the loss of records from the office of the chief of field division, Seattle, Wash., I have the honor to quote below a letter just received from Hon. H. H. Schwartz, chief of field service:

WASHINGTON, D. C., December 22, 1909.

Mr. A. CHRISTENSEN,
Chief of Field Division, Portland, Oreg.

SIR: The additional information promised you in the matter of the investigation of stolen records, Seattle office, is as follows: Miss Helen Simons, private secretary to Norman E. Hapgood, New York City; T. P. Connolly, care of Collier's, New York City; Robert J. Collier, publisher, New York City; and Norman E. Hapgood, editor of Collier's, New York City.

Respectfully,

(Signed) H. H. SCHWARTZ,
Chief of Field Service.

I have not yet had time to review the papers to ascertain from what source the Wheatley letter was received. As soon as I have the opportunity, I shall endeavor to furnish you with that information.

Very respectfully,

A. CHRISTENSEN,
Chief of Field Division.

Mr. VERTREES. It is stating merely that he got that additional information from Mr. Schwartz, with those names of Hapgood and Connolly, care Collier's. This letter of January 5 is a mere carbon copy of that other. It is not necessary to put that in.

Mr. BRANDEIS. Which was the January 5 letter?

Mr. VERTREES. The one—

Mr. CHRISTENSEN. That is another letter.

Mr. VERTREES. I guess I had better read it, then. Is that the last one on the subject?

Mr. CHRISTENSEN. Yes, sir.

Mr. VERTREES. It is as follows:

[Incloses copy of letter from United States District Attorney to Attorney-General in re stolen records from office of Chief of Field Division. AC.]

SEATTLE, WASH., January 5, 1910.

Hon. H. H. SCHWARTZ,
Chief of Field Service, Washington, D. C.

SIR: Referring to my letter to you of December 30, 1909, relative to the matter of stolen records from the government files of the office of chief of the seventeenth field division, Seattle, Wash., in which I advised you of my conference with United States Attorney E. E. Todd, and furnished you with a copy of my letter to him of

December 28, 1909, urging that the matter be presented to the next grand jury, I have the honor to transmit herewith copy of a letter written by Mr. Todd to the Attorney-General, dated December 30, 1909, in which he gives an outline of the case, but expresses doubt as to whether or not a conviction could be secured from the facts submitted to him.

In view of the notoriety that such investigation would cause, Mr. Todd does not desire to accept the responsibility of instituting the inquiry without first securing authority from the Attorney-General. He suggests a personal conference with the Attorney-General so that he can present all the papers which we have submitted to him to the Attorney-General. I believe that I have from time to time furnished you with copies of nearly all of the papers now in the possession of Mr. Todd, and I am of opinion that if you will personally consult the Attorney-General and present to him the facts as they appear from your records, that he would direct Mr. Todd to call a special grand jury for the purpose of inquiry. If, however, you do not think that you have all of the facts, I would suggest that you see the Attorney-General and have him wire for Mr. Todd, in order that the inquiry may be instituted at the earliest date practicable.

▶ The further I look into the matter the more convinced I am that these papers were either sent direct by Glavis to Collier's, or were sent by him to the Forest Service, who sent them to Collier's. Mr. Todd's contention that the sending of these papers by Glavis to the Forest Service is not a violation of the statute may be conceded, but it certainly was a violation of the statute if the Forest Service, after receiving these government records, sent them to Collier's where they are now being concealed and the Government deprived of the use thereof. If an indictment can not be secured against Glavis, why could not the parties now in possession of the records be indicted? Under the same act they can be prosecuted for receiving and concealing them, as well as the person who procured them.

Very respectfully,

Chief of Field Division.

Mr. BRANDEIS. If I understood you, that was the last of the communications looking to the criminal prosecution and the investigation!

Mr. CHRISTENSEN. Yes, sir; except, I see that here is a letter of February 1; that was after this investigation started; I wrote Mr Schwartz in connection with some information that had been furnished me by Mr. Todd, the United States attorney.

Mr. VERTREES. What is there in that that you wish to come in! You had better read, perhaps. It is short.

Mr. CHRISTENSEN. It is as follows:

SEATTLE, WASH., February 1, 1910.

Mr. H. H. SCHWARTZ,
Chief of Field Service, Washington, D. C.

SIR: I have just been informed by United States Attorney Todd that Payson C. Richardson who has been subpoenaed as witness before the joint committee and who was the prosecuting witness for the Government in the Wilson coal cases, had told him that on Sunday, September 19, 1909, when I made formal demand upon Glavis for certain records which he had refused to deliver to me, said Richardson was at the hotel. Richardson immediately secured a stenographer for Glavis and proceeded to make copies of all the said records, the stenographer and said Richardson working until 6 o'clock Monday morning. This accounts for Glavis having copies of all of these records. Mr. Richardson maintained to Todd that all of the originals were returned to this office. I do not know whether Glavis had any of the missing letters in his possession at that time. Mr. Todd is of the opinion he did not; that the missing letters were sent to the Forest Service on September 18 with other records sent.

I am calling this matter to your attention so that Mr. Richardson and Mr. Glavis may be cross-examined on this point before the committee and in order that the missing records may be located, if possible. Mr. Glavis now has in his possession copies of official records which should only be in possession of the Government, and I believe that action should be taken to secure these copies from him, as they are now being unlawfully retained by him.

I fully realize now that the advice from assistant United States attorney to give Glavis until Monday morning to return the papers was a mistake; but they were in his possession, and the only way I could have gotten possession of them was through a search warrant. If I had taken such action, he would immediately have jumped into the newspapers and advertised the fact that the General Land Office was afraid

that he had official records that were not proper for publication. It seems, however, that no other action could properly have been taken by myself in order to secure the papers from him.

A list of the papers of which he made copies and which were returned to me, at about 10 a. m., Monday morning, September 20, is attached herewith. As stated, these papers were returned to me, and I assume he made copies of all of them.

Very respectfully,

Chief of Field Division.

Mr. VERTREES. Now, at that time this committee was proceeding with its investigation, was it not?

Mr. CHRISTENSEN. Yes, sir.

Mr. VERTREES. Was any demand made on you or any direction to you to produce any papers and documents for this committee?

Mr. CHRISTENSEN. There were several.

Mr. VERTREES. Do you recall what they were, or have you copies of them?

Mr. CHRISTENSEN. It will be rather difficult to enumerate all of them. I have the original telegrams here and also the original letters in which they called for different documents.

Mr. VERTREES. Who are they from?

Mr. CHRISTENSEN. From Mr. Schwartz, generally. One of them, I believe, is from Mr. Dennett, the commissioner.

Mr. VERTREES. What do they direct you to do as chief of that division?

Mr. CHRISTENSEN. They direct me to produce the records; that the joint committee has called for certain records, and they quote the request.

Mr. BRANDEIS. I assume that you are purporting to put in all of these requests?

Mr. VERTREES. Yes, sir.

The CHAIRMAN. Are those these missing letters that we have been talking about?

Mr. CHRISTENSEN. They relate to them; yes, sir.

Mr. VERTREES. Read the first demand that was made on you by anyone, and state who made it.

Mr. CHRISTENSEN. I do not know which was the first demand. There were several received—several telegrams received on the first date; I think it was dated January 31.

Mr. VERTREES. Well, let us have them.

Mr. CHRISTENSEN. Here is a telegram dated January 31:

[Telegram.]

WASHINGTON, D. C., *Jany. 31-10*,
(Via Portland, Ogn., Feby. 1-10).

Special Agent CHRISTENSEN,
G. L. O., Federal Bldg., Seattle, Wn.:

Joint committee requires [quote] all letters and other papers now or formerly in the Bureau, Alaska, land office relating to the Cunningham claims, so called, and particularly all communications from, and copies of all communications to, Clarence Cunningham; also all the papers delivered to Special Agent Bowman in 1909 and for which receipt was given by him, including, among others, a letter dated January 15, 1909, from the said Cunningham to the register and receiver of the said office. End quote.] Forward me immediately all letters and papers in your files or which you can procure, as above required, with explanation as to whereabouts, if you know, of any papers not in your possession.

SCHWARTZ, *Chief.*

Senator FLINT. Is that letter of the 15th one of the missing letters?
Mr. CHRISTENSEN. Yes, sir. That should be January 15, 1908. They have it wrong in the telegram.

Mr. VERTREES. I will ask you if those brought down by Bowman are not the missing letters—he brought down part of them?

Mr. CHRISTENSEN. I do not know whether I understand your question.

Mr. VERTREES. The letters called for there are a lot of letters that Bowman brought down from Juneau?

Mr. CHRISTENSEN. Yes, sir.

Mr. VERTREES. Do they not include these same 24 missing letters?

Mr. CHRISTENSEN. Yes, sir.

Senator FLETCHER. That letter of January 15 was not a missing letter. Was that not the one he delivered to you on Monday?

Mr. CHRISTENSEN. Yes, sir; but the telegram includes those other missing letters.

Senator FLETCHER. But Senator Flint asked you if this was one of the missing letters and you said yes.

Mr. CHRISTENSEN. I beg pardon. I did not understand it.

Mr. VERTREES. It was delivered up, that one, Monday morning?

Mr. CHRISTENSEN. Yes, sir; that was returned Monday morning.

Mr. VERTREES. And the only one that was?

Mr. CHRISTENSEN. Yes, sir.

Mr. VERTREES. And the call for those papers was made by this committee, as the record shows, on January 27, 1910, and is found on page 319, being subdivision 10 of the call. What did you do when you received that telegram?

Mr. CHRISTENSEN. I was in Seattle at that time. There were two or three others that came up there.

Mr. VERTREES. Have you got them?

Mr. CHRISTENSEN. Yes.

Mr. VERTREES. You mean that came that day?

Mr. CHRISTENSEN. Yes, sir.

Mr. VERTREES. Let us have them.

Mr. CHRISTENSEN. They relate to different matters, however. Here is one:

[Telegram.]

WASHINGTON, D. C., *Jany. 31* (via Portland, Ogn., Feby. 1, 10).

Special Agent CHRISTENSEN,
G. L. O., Federal Bldg., Seattle, Wn.

Joint committee requires "Personal letter from L. R. Glavis to H. H. Schwartz, dated in January or February, 1908, calling attention to preliminary investigation of Cunningham case and necessity of field examination." Reports show carbon copy of a letter Glavis to me Feby. 22, 1908, written from San Francisco. Forward such carbon copy with statement as to its authenticity.

SCHWARTZ, *Chief*

Mr. VERTREES. I wish that to go in.

The CHAIRMAN. It is admitted.

Mr. VERTREES. Did you get another telegram that day or not?

Senator SUTHERLAND. I suggest, Mr. Vertrees, that it be put into the record without reading, unless you want to ask some questions about it.

Mr. CHRISTENSEN. I do not think any other was received. I received two or three telegrams in Portland on January 29. I had them with me in Seattle on that day and was looking them over.

Mr. VERTREES. Have you got them here?

Mr. CHRISTENSEN. Yes, sir.

Mr. VERTREES. Just put them in without reading them.

The CHAIRMAN. They are admitted.

Mr. VERTREES. They were calls for different papers?

Mr. CHRISTENSEN. Yes, sir.

(The telegrams are as follows:)

[Telegram.]

WASHINGTON, D. C., Jan. 29th, 1910.

Special Agent CHRISTENSEN,
G. L. O., Portland, Ore.

Joint committee desires "daily reports of special agents' report books now or formerly file in the General Land Office or the Seattle or Portland, Oregon, land offices of the following persons for the periods respectively set forth: Special Agent H. K. Love, from May 15, 1907, to date of retirement from the service; Special Agent Horace Tillard from June 15, 1907, to Dec. 16, 1909; Special Agent S. N. Stoner, March 10, 1908, to May 15, 1908, and March 4, 1909, to Dec. 16, 1909; Special Agent Andrew Kennedy, March 10, 1908, to May 15, 1908, and March 4, 1909, to Dec. 16, 1909; Special Agent Arthur R. Bowman, March 4, 1909, to Dec. 16, 1909; Special Agent Gery, June 1, 1909, to Sept. 16, 1909, and daily reports, daily report books, and monthly expense account of Louis R. Glavis, March 4, 1907, to Sept. 16, 1909." The daily reports called for and the monthly accounts will be supplied from this office. You will forward the report books in question at once.

SCHWARTZ, Chief.

[Telegram.]

WASHINGTON, D. C., Jan. 29th, 1910.

Special Agent CHRISTENSEN,
G. L. O., Portland, Ore.

Joint committee wants "unsigned copy of statement made by Watson Allen about March, nineteen hundred seven, now or formerly filed in land office concerning agreement entered into relating to conveyance in escrow of claims to coal lands involved in proceedings of the United States against the Wilson Coal Co., Sterling Coal Co., et al." such paper exists it will probably be found among the exhibits filed in the case of the United States courts, western district, Washington. Examine the record of that case and secure that paper if possible, otherwise certified copy, and forward to me at once.

SCHWARTZ, Chief.

Green 173; 5224 14th ave., M. E.

Mr. VERTREES. Do those telegrams call for any of these particular matters that we are now considering?

Mr. CHRISTENSEN. That first telegram; that I read.

Mr. VERTREES. I know the first telegram, but I mean any of these other telegrams?

Mr. CHRISTENSEN. No, sir.

Mr. VERTREES. What did you do when you got those telegrams?

Mr. CHRISTENSEN. I proceeded to——

Mr. BRANDEIS. I assume, Mr. Vertrees, that you are putting in the record the letters which confirm the telegrams.

Mr. VERTREES. Did you write letters confirming the telegrams, or replying——

Mr. CHRISTENSEN. I replied to them, yes, sir; and transmitted the records where I could find them, and where I could not find them I could write to that effect.

Mr. BRANDEIS. I refer also to Mr. Schwartz's letter confirming his telegram.

Mr. CHRISTENSEN. He did not write letters confirming his telegrams.

Mr. VERTREES. And in response to those telegrams you made a search through the office for the papers?

Mr. CHRISTENSEN. Yes, sir.

Mr. VERTREES. Did you make any search for the 24?

Mr. CHRISTENSEN. No, sir.

Mr. VERTREES. Why?

Mr. CHRISTENSEN. Because the office had already been searched and I did not see any necessity for it.

Mr. VERTREES. Did you search for the others?

Mr. CHRISTENSEN. Yes.

Mr. VERTREES. Did you find any of them?

Mr. CHRISTENSEN. Yes, sir; some of them—most of them.

Mr. VERTREES. Did you continue the search for some of those others that you have mentioned?

Mr. CHRISTENSEN. Yes, sir.

Mr. VERTREES. What particular papers were you searching for at the time you found those given letters?

Mr. CHRISTENSEN. I was searching for the telegrams of April 11 and 13, 1909, and Commissioner Dennett's letter of June 3, 1905. I had received in Portland, Oreg., on February 7 three letters from Mr. Schwartz, among which was this one calling for certain records.

Mr. VERTREES. Have you those letters?

Mr. CHRISTENSEN. Yes, sir.

Mr. VERTREES. I will ask you to put them into the record without reading them.

The CHAIRMAN. They are admitted.

(The letters referred to are as follows:)

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., February 1, 1910

Mr. A. CHRISTENSEN,
Chief of Field Division, Portland, Oregon.

SIR: The joint committee has asked for the following:

"Original report of H. T. Jones to L. R. Glavis, dated Dec. 2, 1907, now or formerly in General Land Office."

This report appears in Mr. Glavis' statement and is on page 5 of Senate Document 248, and is a report by Jones to Glavis of all of his movements and his alleged interviews with Special Agent Love and Commissioner Ballinger and other parties in relation to the investigations carried on by Jones and Love in Alaska coal matters in August, 1907.

Please make careful search, and if you are able to find the original report, or any information showing its location, forward it to me at once.

Respectfully,

H. H. SCHWARTZ, *Chief of Field Service*

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., February 1, 1910

Mr. A. CHRISTENSEN,
Chief of Field Division, Portland, Oregon.

SIR: In a communication received from the Joint Committee Investigating the Interior Department and Forest Service, there is a request for certain papers, among which are the following:

"Letter from Mr. Todd, U. S. attorney at Seattle, Washington, about May, 1908, relating to the proposed criminal prosecution of certain Alaskan coal claims, which

letter should now be on file either in the General Land Office, or in the Seattle land office, and all other papers in either of said files bearing upon the same matter."

If you have in the files of your office, or elsewhere within your knowledge, any letter, memorandum, telegram, or other paper, relating to the subject matter, please forward the same to this office *at once*. If no such matter can be found, so advise me.

Respectfully,

H. H. SCHWARTZ,
Chief of Field Service.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., February 1, 1910.

Mr. A. CHRISTENSEN,
Chief of Field Division, Portland, Oreg.

SIR: The joint committee has asked for the following:

"Telegram of L. R. Glavis to Commissioner, April 11, 1909, and reply of Commissioner to Glavis, April 13, 1909. Also original letter of Commissioner Dennett to Glavis, June 3, 1908," advising him of the passage of the new coal land law, and directing him to continue his investigations and submit reports in accordance therewith.

Please search through the files in your possession. If the original letter is found, forward the same to this office.

Respectfully,

H. H. SCHWARTZ,
Chief of Field Service.

Mr. VERTREES. Is there any other communication relating to that matter that ought to go in, Mr. Christensen?

Mr. CHRISTENSEN. I understand that Mr. Brandeis has called for all the correspondence between myself and the office relating to forwarding documents requested by the committee, and I have here all the correspondence in my possession relating to that. I am simply giving him now the original telegrams and letters from myself to the office.

Mr. BRANDEIS. And your replies?

Mr. CHRISTENSEN. No, sir; my replies are here.

Mr. VERTREES. Suppose you put your replies in in this connection.

The CHAIRMAN. Mr. Vertrees, would it not be a good plan to have all of these go in in a bunch, as it would be handier to look over them?

Mr. BRANDEIS. That was my idea, Mr. Chairman.

The CHAIRMAN. Instead of waiting for your cross-examination, you had better have them all go in now. Have you any objection to that, Mr. Vertrees?

Mr. VERTREES. Not at all, except that we would like to bring them out in an orderly way.

The CHAIRMAN. I think it would be a better plan to have them in the record all together.

Mr. VERTREES. Mr. Christensen, just put in all the documents, originals and copies, which you have and I will ask that they be printed.

The CHAIRMAN. That will be done.

The papers referred to are as follows:)

SEATTLE, WASHINGTON, January 31, 1910.

Mr. H. H. SCHWARTZ,
Chief of Field Service, Washington, D. C.

SIR: Referring to my telegram to you of even date in which I advised you as follows:

"Baje twenty ninth. Have searched records in United States vs. Wilson Coal Company, Sterling Coal Company, et al., with poatne, but no record can be found of unsigned statement made by Watson Allen. Poatne and Murphy, attorney for

2784 INVESTIGATION INTERIOR DEPT. AND BUREAU OF FORESTRY.

defendants, nor chief witness Richardson have never heard of such statement. Allen does not recall making statement."

I have to advise you that the records in the case of United States vs. Watson Allen et al. (Wilson Coal Company and Sterling Coal Company cases) were brought to the United States attorney's office, and Mr. Todd and myself went carefully through the records and exhibits, but found no mention of any unsigned statement made by Watson Allen. I also talked with Mr. Allen, and he maintains that he never made a statement at least he does not recall having done so. Attorney Murphy, for the defendant, informed Mr. Todd that he does not believe that any statement was made by Mr. Allen. Richardson, chief witness for the Government, is of the same opinion. Mr. Todd is also familiar with the case, he having filed a brief therein, and he is positive that no statement by Allen was ever referred to in the case. I have also reviewed the records, but can find no mention of any such statement. I am, therefore, of the opinion that such statement never existed, at least so far as the records of this division and the United States attorney's office and the court's show.

Very respectfully,

Chief of Field Division

[Telegram.]

SEATTLE, WASH., Jan. 31, 1910

SCHWARTZ,

Chief Field Service, Washington, D. C.:

Baje twenty-ninth. Have searched records in United States versus Wilson Coal Company, Sterling Coal Company, et al., with Poatne, but no record can be found of unsigned statement made by Watson Allen. Poatne and Murphy, attorney for defendants, nor Chief Witness Richardson have never heard of such statement. Allen does not recall making statement.

CHRISTENSEN

[Telegram.]

PORTLAND, OREGON, February 10, 1910

SCHWARTZ,

General Land Office, Washington, D. C.:

Baje, January twenty-ninth, found unsigned statement made by Watson Allen March thirteenth, nineteen seven, among papers delivered to me by Glavis November fifth. Will forward to-day.

CHRISTENSEN, Chief.

PORTLAND, OREGON, February 10, 1910.

Hon. H. H. SCHWARTZ,

Chief of Field Division, Washington, D. C.

SIR: Referring to my telegram to you of even date, in which I advised you as follows: "Baje January twenty ninth found unsigned statement made by Watson Allen March thirteenth, nineteen seven, among papers delivered to me by Glavis November fifth. Will forward today."

I have to advise you that in looking over the papers delivered to me by Mr. Glavis in the office of the district forester, Portland, Oregon, on November 5, 1909, with the following letter:

[The Portland, Oregon, H. C. Bowers, manager.]

PORTLAND, ORE., Nov. 5, 1909

Mr. ANDREW CHRISTENSEN,

Chief of Field Division, Portland, Oregon.

DEAR SIR: In looking through my personal letter files, I discovered some letters and copies of letters that might be considered semi-official, and I therefore deliver them to you.

Respectfully,

L. R. GLAVIS

I found the copy of the unsigned statement alleged to have been made by Watson Allen in March, 1907, relative to his connection with the Wilson and Sterling coal companies.

At the time I made the first search for this paper I did not think of looking through this particular bundle of papers, which has been kept in my desk in case it should be used in any proceeding which might be instituted in the future. The papers delivered to me on November 5, 1909, you will remember, included a large number of other official papers which Mr. Glavis, in his letter to me, terms semiofficial.

Very respectfully,

(Chief of Field Division.

EXHIBIT B.—FEB. 18, 1910—H.

UNITED STATES ATTORNEY'S OFFICE,
Seattle, Wash., March 30, 1907.

Interview of Watson Allen, New York Block, Seattle, Washington, by Special Assistant United States Attorney Henry M. Hoyt, at United States attorney's office at 5 p. m.

Q. You are one of the officers of the Wilson Coal Company?—A. Not now. I told Mr. Wilson I could not do anything for him. I am not going to put any money into it at all. Well, he says, you are familiar with organizing, etc., and can help in getting this thing started. I said, All right; I will.

Q. How long did you remain a director?—A. Six months—not to exceed a year—I do not remember.

Q. You were a member of the board of trustees when they acquired these coal properties, weren't you?—A. I think they had them all taken over before they called on me.

Q. You were one of the original incorporators. You were a part of the corporation as soon as the corporation was in existence?—A. Maybe I was.

Q. Did you not take part at the meeting of the board in which it was resolved to take over this property?—A. I may have; I don't remember. It was pretty well under way when they asked me in. I was very busy, and always have been, so I can't remember about that. I had an option on the property for perhaps two years, and went over there and examined it for them. They made over the deeds to two of the claims. They could not deliver the rest, so I threw it up. I told them I would not bother with just two claims. I can't handle the property unless I have the rest of the claims. There was to be six originally.

Q. Who negotiated with you when you got your option, the elder Mr. Wilson—R. L. Wilson?—A. Yes, sir.

Q. This was sometime prior to the organizing of the Wilson Coal Company—about what date?—A. I can't hardly give a guess. May have been eight years ago. I can't tell just how long.

Q. Have you any memorandum or anything that will enable you to tell?—A. Yes; I can, by going to the books and looking up certain things; I can tell pretty near.

Q. You be careful to preserve those books, Mr. Allen, as we will have to ask you about those things. What other members of the outfit talked to you about that property?—A. Never had anything to do with them other than Wilson until I was called on to organize the Wilson Coal Company. That was after I turned back the deeds.

Q. You got the two deeds from Helen Pack Wilson and Minn. Marie Wilson?—A. Yes.

Q. Did Mr. Wilson bring you those deeds?—A. I think they came and signed the deeds in the office. The girls came to the office.

Q. Did you talk to them about it?—A. They simply came and made the deeds.

Q. Whom did you pay the money to?—A. I don't remember about that. The deeds were left in escrow, I think with Ballinger, Ronald & Co. I have attorneys there, and I can't remember now whether it was Ronalds or Ballinger, one of the firm or one of the outfit. The papers were all made out at their office and signed up. I think I was going East the next day.

Q. Did you pay them this amount of money, \$6,400 for each deed?—A. I gave them notes and put them in escrow. I am not certain now which one of the firm it was left with in escrow.

Q. It was left with Judge Ballinger, I think?—A. Perhaps; I can't remember.

Q. They laid there for something over a year?—A. Perhaps that was it. I have not thought of it since.

Q. Whom did you make the contract with?—A. I don't remember now. The contract was made with the girls, so far as they were concerned—was signed up—and I don't think I have a copy of the contract.

Q. The escrow holders would have a copy of the contract, would they not? Would Mr. Ballinger know anything about it?—A. Don't know.

Q. They are your attorneys, aren't they?—A. Yes.

Q. Would you mind calling them up and see if they could find that escrow agreement?—A. Yes.

Q. (Phone, by Mr. Allen.) Do you remember anything about making out an escrow agreement with R. A. Wilson and his daughters for some coal and timber lands over in Lewis County?—A. (By Mr. Ronald.) Yes; seven or eight years ago—not less than six or seven.

By Mr. Hoyt:

Q. Haven't you any recollection as to the option? Of course, you did not get the option for nothing. I suppose you paid them some money. Did you pay them a substantial sum or just a nominal sum, the idea being more to the future operations than what you were paying for?—A. I don't remember whether there was anything except what Wilson had owed me. Wilson borrowed some money from me and I am holding his note yet. It was supposed to be credited to him. Wilson and I were practically friends. I would do anything to help him. That was honest and square and open and aboveboard.

Q. This option you had included the two deeds which Helen Pack Wilson and Minn Marie Wilson left with you, and the other Wilson filings?—A. Six claims was what I was to have.

Q. About 960 acres?—A. Yes; between eight and nine hundred. I went to Philadelphia and saw the people who owned the other tract. It would take about 10,000, and would be a fine piece of property to handle. I was not after coal. It was the timber that was worth the money and was what I figured on.

Q. Do you know the other members of the board? Do you know Kilpatrick?—A. Yes.

Q. Who was Geo. M. Gilson?—A. He is dead.

Q. Who was Wilkins?—A. I think Wilkins has an office up in the Alaska Building. I saw a man up there a month ago whom I took to be him.

Q. This H. P. Wilson mentioned is Helen Pack Wilson. She was a member of the board, was she?—A. Yes; secretary, I think.

Q. You understood, did you, at the time that these properties were in process to be proved up on?—A. Yes, sir. The understanding was that there was some contest or something; that was, they could not deliver the goods. When I first spoke to Mr. Wilson about taking an option on the property I knew nothing about there being any contest and supposed he would deliver right over, but it finally developed there was contests; they had not been proved up on, and I began to get tired; could not wait. Might not be settled in my lifetime.

Q. This was all under negotiation a considerable time before you got the deeds?—A. Yes, sir.

Q. And you understood that they could not make any conveyance until they got title out of the land office for the other portion?—A. Yes, sir.

Q. Did these girls have title when you commenced to negotiate?—A. I don't know about that. I think they had. I am quite well satisfied, because it was some time before I knew there was any question about any of the title. I think it was about seven years ago, because I had let Wilson have money to go East with.

Q. Of course, H. P. Wilson's claim was patented June 27, 1903. I will tell you that for your information so as to clear things up a little. That is the date of the patent.

Q. (By Mr. ALLEN to Mr. HOYT.) When did they pay for it?—A. F. C. March 4, 1902. Deed to you was dated August 29, 1902.

Q. (By Mr. HOYT.) Can you remember how long you had been in negotiations with them before that?—A. No.

Q. Did you understand they had money enough to pay for them all?—A. I don't know anything about it.

Q. Don't you know about Wilson's affairs enough to know that he could not. There were other parties furnished the money at the land office. Did they talk to you about Mr. Richardson being interested?—A. I think there was a man by the name of Richardson into the deal.

Q. Did you know anything about the Sterling Coal Company?—A. No.

Q. Just knew there were certain people interested in with them?—A. Yes.

Q. A man by the name of Richardson is interested in the Sterling Coal Company

nn Marie Wilson's property was the SW. $\frac{1}{4}$ sec. 10, and the other one was the V. $\frac{1}{4}$ sec. 10, Helen Pack Wilson's. She never got a patent. When she gave you deed she had no patent?—A. I never knew anything about that.

Q. It is still in controversy.—A. They represented to me the two claims were all ar.

Q. Did they try to find any abstract?—A. I was not making final payment because was in question about the balance of claims and not down to the abstract.

Q. Didn't you know, Mr. Allen, on October 10, 1904, when you got up the Wilson and Company that Richardson and the Sterling Coal Company were suing these people to carry out their contract?—A. I knew there was litigation going on.

Q. You did not know the character of it at all?—A. No; don't remember I did.

Q. You knew Richardson was putting up some of the money?—A. They talked about. They told me a man by the name of Richardson was interested with them.

Q. Do you remember who told you that?—A. I presume it must have been R. A. leon, as he was the only one I treated with until the deeds were turned over.

Q. At what time?—A. I think it was before. I can not give dates.

Q. You think you can look at your books and find out when you first got into negotiations about this land. Don't you know from certain entries in your books?—A. I nk I destroyed all the contracts and writing. I supposed it was all off, and I don't lieve I have got anything that will show.

Q. The Wilson Coal Company was not organized until October 10, 1904, and the Sterling Coal Company suit against R. Wilson and all the rest of the people was started the United States circuit court as early as September 15, 1903. Didn't Mr. Wil- when representing to you about Richardson being interested with him, tell the nature of what Richardson's interest was?—A. He may have told me. I don't member. I know there was a Richardson interested with him and he must have told

Q. Just before this Wilson Coal Company was started, how much did you know about trouble between the Wilsons and Richardson?—A. I knew there was litigation. don't know its origin or anything. I knew it was something about the property.

Q. Are you a stockholder?—A. I have one share which they gave me to act as an cer.

Examination by LOUIS R. GLAVIS:

Q. Wasn't that their object in forming their company?—A. I know nothing about it at all. I gave those deeds back and got my notes back and demanded it to come that. I would not stand it any longer.

SEATTLE, WASHINGTON, January 31, 1910.

H. H. SCHWARTZ,

Chief of Field Service, Washington, D. C.

SIR: I am in receipt of your telegram of the 29th instant, reading as follows:

"Joint committee desires quote daily reports of special agents' report books now or merly on file in the General Land Office or the Seattle or Portland, Oregon, and offices, of the following persons for the periods respectively set forth, Special gent H. K. Love, June 15, 1907, to date of retirement from the service; Special gent Horace Tillard Jones, June 15, 1907, to Dec. 16, 1909; Special Agent S. N. mer, March 10, 1908, to May 15, 1908, and March 4, 1909, to Dec. 16, 1909; Special gent Andrew Kennedy, March 10, 1908, to May 15, 1908, and March 4, 1909, to Dec. 1909; Special Agent Arthur R. Bowman, March 4, 1909, to Dec. 16, 1909; Special gent Gery, June 1, 1909, to Sept. 16, 1909; and daily reports, daily report books, and monthly expense account of Louis R. Glavis, March 4, 1907, to Sept. 16, 1909. and quote.) The daily reports called for and the monthly accounts will be supplied in this office. You will forward the report books in question at once.

"SCHWARTZ, Chief."

In accordance therewith I have to advise you that I am unable to find all of the port books requested, and the following is a statement of all of the books forwarded you this date under separate cover, by registered mail:

H. K. Love.—I have no report books of Mr. Love after June 15, 1907. I wired him day at Fairbanks, as follows: "Joint committee desires your daily report books on June fifteenth, nineteen hundred and seven, to date retirement from service. be immediately where such books can be found. If they are now in your possession, ward immediately to this office," to which he replied: "All report books but the

last turned in to Glavis in Portland, 1908; will bring that with me. Leaving Seattle to-day."

Mr. Love does not state what the report book he is bringing with him from Fairbanks covers, but I presume it covers the period mentioned. The records at Portland and also the records of this office have been searched, but no report books covering the period mentioned can be found. I have, however, the report books from May 1, 1905, to June 10, 1907, and also volumes 1 and 2 containing a docket of cases handled by him from May 1, 1905, until some time in 1907. As they were not requested, I have retained them here.

Horace Tillard Jones.—Report books containing record from June 15, 1907, to June 15, 1909, have been found. Mr. Jones will take with him the report books from June 15, 1909, to June 30, 1909. No report books were kept by any of the agents after July 1, 1909, on account of the new daily reports which were put in use at that time.

S. N. Stoner.—I have been unable to find any report books of Mr. Stoner's either in Portland or Seattle. I have wired Chief Lyders, at San Francisco, requesting the such report books be forwarded to me at Portland. When they are received they will be sent to you.

Andrew Kennedy.—I have sent you three books containing records of work for the period required.

Arthur R. Bowman.—No report books of Bowman can be found either in Portland or in the Seattle division. I have wired Chief Baker, at Cheyenne, to instruct Bowman to forward to you direct the report books required.

Raymond E. Gery.—I have forwarded to you report book of Mr. Gery containing record from June 1, 1909, to June 30, 1909. No report book was kept by Mr. Gery after June 30, 1909, for the reason that new style daily reports were used from that time.

Louis R. Glavis.—I have forwarded you daily report book of Mr. Glavis containing record from March 4, 1907, until March 11, 1908. I have been unable to find a report book of Mr. Glavis from March 12, 1908, until September 16, 1909. Mr. Glavis has been returning to me, from time to time, since his separation from the service parts of records belonging to both the Portland and Seattle divisions, and it is possible that he has failed to turn over to me his report book from March 12, 1908, until he was separated from the service. I would suggest that you take this matter up with him.

The records of both divisions have been carefully searched, but I am unable to find any more than the books I have above enumerated and which I have advised you have been sent. Should any of the books be found, they will be immediately forwarded to you.

Very respectfully,

Chief of Field Division.

[Telegram.]

SEATTLE, WASHINGTON, Jan. 31, 1910.

H. K. LOVE,

U. S. Marshal, Fairbanks, Alaska:

Joint committee desires your daily report books from June fifteenth, nineteen hundred seven, to date retirement from service. Wire immediately where such books can be found. If they are now in your possession forward immediately to this office.

CHRISTENSEN

[Telegram.]

FAIRBANKS, ALASKA, Jan. 31st, 1910.

CHRISTENSEN,

Special Agent Land Office, Seattle, Wash.:

All report books but the last turned in to Glavis in Portland, 1908, will bring them with me. Leaving for Seattle to-day.

LOVE

[Telegram.]

PORTLAND, OREGON, January 29, 1910.

LYDERS,

Chief Field Division, San Francisco, Cal.:

Schwartz wires joint committee desires report books of S. N. Stoner March tenth, nineteen eight, to May fifteen, nineteen eight; March fourth, nineteen nine, to December sixteen, nineteen nine. Please instruct Stoner to forward said books to me immediately.

CHRISTENSEN.

PORTLAND, OREG., Feb. 4th, 1910.

Mr. H. H. SCHWARTZ,

Chief of Field Service, Washington, D. C.

SIR: Complying further with request contained in your telegram of January 29th, 1910, in which you request daily report books of a number of special agents, I have the honor to transmit herewith daily report books of Special Agent Stoner, from January 1st, 1908, to June 30th, 1909.

These books have just been received from San Francisco from Special Agent Stoner and are now in the same condition in which they were received here.

Very respectfully,

Chief of Field Division.

SEATTLE, WASHINGTON, February 8, 1910.

Mr. H. H. SCHWARTZ,

Chief of Field Service, Washington, D. C.

SIR: Complying further with your request contained in your telegram of January 29, 1910, I have to-day forwarded you, under separate cover and by registered mail, daily report book containing notes of work performed by former Chief of Field Division Glavis from July 2, 1908, until June 4, 1909; also carbon copies of his daily reports from January 1st to June 30th, 1909. These are part of the records that were found among Glavis's personal effects in the grand jury room in the federal building and concerning which I have made separate report to you this date.

Very respectfully,

Chief of Field Division.

PORTLAND, OREGON, February 3, 1910.

Hon. H. H. SCHWARTZ,

Chief of Field Service, Washington, D. C.

SIR: I transmit herewith daily report books of Special Agent Jones, from July to December, 1909, in accordance with your telegram of the 29th ult.

I am not sure that you desire these report books as you have carbon copies of the reports on file in your office. They are sent you however in case you should need them.

I have sent you from Seattle this date the daily report books requested, as follows:

S. N. Stoner, July 1 to December 1909.

R. E. GERY, July 1 to September, 1909.

L. R. Glavis, July 1 to September, 1909.

Also typewritten daily reports from March 12, 1908 to June 30, 1909.

Andrew Kennedy, July 1 to December, 1909.

Very respectfully,

Chief of Field Division.

PORTLAND, OREGON, February 4, 1910.

Hon. H. H. SCHWARTZ,

Chief of Field Service, Washington, D. C.

SIR: Complying with your telegraphic request of recent date and referring to my letter to you of January 31, 1910, with which I transmitted a number of daily report books, as requested by your telegram of January 29, I transmit herewith report book of Special Agent Horace Tillard Jones, from June 1 to June 30, 1909, inclusive.

2790 INVESTIGATION INTERIOR DEPT. AND BUREAU OF FORESTRY.

This book was in the possession of Mr. Jones, and I have been unable to secure it until this time.

This, I believe, furnishes you with all of the report books you have called for and gives you all the report books that I have been able to secure.

Very respectfully,

Chief of Field Division.

[Telegram.]

PORTLAND, OREGON, January 29, 1910.

BAKER,
Chief Field Division, Cheyenne, Wyo.:

Schwartz wires joint committee desires report books of Arthur R. Bowman March fourth, nineteen nine, to December sixteen, nineteen nine. Instruct Bowman to forward said books to Schwartz immediately and advise me action taken.

CHRISTENSEN.

[Telegram.]

CHEYENNE, WYO., Feb. 1, 1910.

Chief Field Division A. CHRISTENSEN,
Portland, Ore.:

Baja January twenty nine, Bowman says his report books July to November, inclusive, on file at Seattle.

BAKER.

6.55 p. m.

[Telegram.]

PORTLAND, OREGON, Feb. 2, 1910.

Chief of Field Division BAKER,
Cheyenne, Wyo.:

Wire whether Bowman has forwarded daily report books March fourth to June thirtieth, nineteen nine.

CHRISTENSEN, Chief.

[Telegram.]

CHEYENNE, WYO., Feb. 2nd. 1910.

Chief Field Divn. CHRISTENSEN,
Portland, Ore.

Bowman left to-day for Washington with report books March to June thirtieth.

BAKER.

[Telegram.]

WASHINGTON, D. C., Feb. 2, 1910.

CHRISTENSEN,
Federal Bldg., Seattle, Wn.

Baker advises Bowman's report books for July to November, inclusive, are on file at Seattle; forward same at once to this office for joint committee.

UNDERWOOD, Asst. Chief.

Copy, original forwarded to A. C. B. Parks.

INVESTIGATION INTERIOR DEPT. AND BUREAU OF FORESTRY. 2791

[Telegram.]

SEATTLE, WASH., Feb. 2nd, 10.

CHRISTENSEN,
322 Custom-House, Portland, Ore.

Bowman's report books for July to November requested by joint committee; have forwarded same by registered mail.

SHARTELL.

[Telegram.]

SEATTLE, WASH., Feb. 2, 1910.

CHRISTENSEN,
322 Custom House, Portland, Oreg.

Bowman's report books for July to November requested by joint committee. Have forwarded same by registered mail.

SHARTELL.

[Telegram.]

SEATTLE, WASH., Feb. 2, 1910.

COMMISSIONER GENERAL LAND OFFICE,
Washington, D. C.

Bowman's report books July to November forwarded by registered mail today.

CHRISTENSEN.

SEATTLE, WASHINGTON, February 2, 1910.

Mr. H. H. SCHWARTZ,
Chief of Field Service, Washington, D. C.

Sir: In accordance with telegram from H. L. Underwood, Assistant Chief of Field Service, of even date, which reads as follows:

"Baker advises Bowman's report books for July to November, inclusive, are on file at Seattle. Forward same at once to this office for joint committee."

I am forwarding you, by registered mail, the books requested.

Very respectfully,

E. M. S.,
Chief of Field Division.

SEATTLE, WASHINGTON, February 3, 1910.

Mr. H. H. SCHWARTZ,
Chief of Field Service, Washington, D. C.

Sir: I have this date transmitted to you under separate cover, by registered mail, the following report books: A. Kennedy, July to December, 1909, inclusive; S. N. Stoner, July to December, 1909, inclusive; R. E. Gery, July to December, 1909, inclusive; L. R. Glavis, May to December, inclusive, 1908 (typewritten duplicates), also report books from July to September 18, 1909, inclusive.

Very respectfully,

Chief of Field Division.

SEATTLE, WASH., February 1, 1910.

REGISTER AND RECEIVER,
U. S. Land Office, Juneau, Alaska:

Forward immediately all letters and papers now on file in your office relating to Cunningham claims, so called, particularly all communications from and copies of all communications to Clarence Cunningham. Wire immediately if you have such papers and when they will be forwarded.

CHRISTENSEN.

2792 INVESTIGATION INTERIOR DEPT. AND BUREAU OF FORESTRY.

[Signal Corps, United States Army—Telegram.]

JUNEAU, ALASKA, *February 1, 1910*

A. CHRISTENSEN,
*Chief of Field Division, G. L. O.,
Federal Building, Seattle, Washn.:*

All papers in Cunningham entries forwarded to commissioner when entry was allowed. No letters on file. January thirtieth forwarded to you at Portland copy of Bowman's receipt for one hundred seven letters relating to Cunningham and other claims. Will send copy of communications to Cunningham February sixth, together with favorable report of Love as to Cunningham claims, together with copy of register's notice of proof.

WALKER, *Register*
MULLEN, *Receiver.*

[Telegram.]

SEATTLE, WASH., *February 2, 1910*

CHRISTENSEN,
322 Custom House, Portland, Ore.

Juneau register wires "all papers in Cunningham entries forwarded to commissioner when entry was allowed, no letters on file. January thirtieth forwarded to you at Portland copy of Bowman's receipt for one hundred seven letters relating to Cunningham and other claims. Will send copy of communications to Cunningham February sixth, together with favorable report of Love as to Cunningham claims, together with copy of register's notice of proof."

SHARTELL (10:31 a. m.)

PORTLAND, OREG., *February 2, 1910.*

Hon. H. H. SCHWARTZ,
Chief of Field Service, Washington, D. C.

Sir: I am in receipt of your telegram of the 31st ult., which was forwarded to me at Seattle yesterday, reading as follows:

"Joint committee requires [quote] personal letter from L. R. Glavis to H. H. Schwartz dated in January or February, 1908, calling attention to preliminary investigation of Cunningham case and necessity of field examination. [End quote.] Reports show carbon copy of a letter Glavis to me February 22, 1908, written from San Francisco; forward such carbon copy with statement as to its authenticity."

I am unable to find a copy of a letter from Mr. Glavis to yourself dated February 22nd and written from San Francisco. I am, however, forwarding a letter, which appears to be personal, from Mr. Glavis to yourself, written from Portland on February 27, 1908. This is the carbon delivered to me by Mr. Glavis under the circumstances hereinafter stated. I have made a copy of this carbon for my files.

The attached carbon copy was delivered to me by Mr. Glavis on November 5, 1909, with a large number of other official records, which he had failed to deliver to me at the time he was separated from the service. With the records turned over to me on November 5, 1909, was a note from Mr. Glavis reading as follows:

[The Portland, Portland, Oregon; H. C. Bowers, manager.]

PORTLAND, OREGON, *November 5, 1909.*

Mr. ANDREW CHRISTENSEN,
Chief of Field Division, Portland, Oregon.

DEAR SIR: In looking through my personal letter files I discovered some letters and copies of letters that might be considered semiofficial, and I therefore deliver them to you.

Respectfully,

L. R. GLAVIS.

At the time they were delivered to me I was endeavoring to locate Mr. Glavis to interview him in connection with the loss of certain other official records from the office of the chief of field division at Seattle. I found him in the office of the district forester at Portland, Oregon, in company with A. C. Shaw, former law officer of the Forest Service, and Mr. Allen, district forester. Mr. Glavis told me he had these papers and was going to send them to me.

Very respectfully,

Chief of Field Division.

INVESTIGATION INTERIOR DEPT. AND BUREAU OF FORESTRY. 2793

PORTLAND, OREG., February 27, 1908.

DEAR SCHWARTZ: While in San Francisco I had the pleasure of meeting Edward Doyle, and during the few days we were together I could readily see why you think much of him. Doyle has given me a great deal of information concerning the Alaska coal cases, especially the Cunningham group in Spokane. He stated that Cunningham and several others associated with him had shown him blueprints of coal fields, and from what they had told him he was convinced that they had not done \$5,000 worth of work upon each claim, having only improved one or two claims, and that the improvements which they had made did not amount to a great deal. This puts a different phase on the cases and, while I shall proceed to Spokane next week, as directed, it will now be inadvisable to approve the entries for patent even if I am unable to collect sufficient evidence to prove the conspiracy at this time, as a field investigation must be made.

Doyle is anxious to accompany me to Alaska, and, owing to the short season we will have to make the field investigations of the large number of entries, I wish you would assign him to report for duty to me on May 1 in order that he may accompany the party.

I understand that Marshall is not going to return to Oakland. Moore, who is now acting chief, would make a very good chief of field division, being familiar with the conditions in both States, and is a very energetic and competent man.

I wrote Dennett the other day in regard to various matters, the most important of which was the fact that I had learned that McNery was receiving a larger salary than the other chiefs, and asked him to give me \$2,400, not upon the ground that I am worth more or that I am as competent as McNery, but upon the ground that unless the increase is made my expenses while working on the Alaska coal cases, especially while in Alaska, would be so much greater than that of the other chiefs that the assignment would be in a way a demotion.

Sincerely, yours,

Hon. H. H. SCHWARTZ,
General Land Office, Washington, D. C.

[Telegram.]

WASHINGTON, D. C., Feb. 2, 10.

Special Agent CHRISTENSEN,
Federal Bldg., Seattle, Wn.

Joint committee request the following [quote] original of affidavit of L. R. Glavis, dated September, nineteen nine, now or formerly in Seattle office, relating to conversation of Glavis with Donald A. McKenzie in re Forgery of Papers divd to fadeng nizer Kilvaort a Member of haggosipamod [end quote]. Make diligent search for this affidavit and forward immediately Cedege.

UNDERWOOD, Asst. Chief.

[Telegram.]

SEATTLE, WASH., Feb. 2, 1910.

COMMISSIONER GENERAL LAND OFFICE,
Washington, D. C.

Original of affidavit of L. R. Glavis, relating to conversation of Glavis with Donald A. McKenzie in re Forgery of papers divd to fadeng nizer Kilvaort a member of haggosipamod not in office. Have stenographic notes. Can make copy. Advise.

CHRISTENSEN.

OB Govt. rates collect.

[Telegram.]

WASHINGTON, D. C., Feb. 3-10.

Special Agent CHRISTENSEN, Seattle, Wn.:

Re yesterday re conversation of Glavis with McKenzie have copy made from notes and certified to by stenographer; also make affidavit as to whereabouts of original and any knowledge you may have concerning same.

UNDERWOOD, Asst. Chief.

[Telegram.]

SEATTLE, WASH., Feb. 3rd, 1910.

CHRISTENSEN, 322 Customs-House, Portland, Ore.:

Underwood wires [quote] Baje yesterday re conversation of Glavis with McKenzie Have copy made from notes and certified to by stenographer; also make affidavit as to whereabouts of original and any knowledge you may have concerning same. [End quote.] Will make copy immediately.

SHARTELL.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Seattle, Wash., February 3, 1910.

Mr. A. CHRISTENSEN,
Chief of Field Division, Portland, Oreg.

SIR: Inclosed herewith is certified copy of statement made by L. R. Glavis and Horace Tillard Jones on September 8, 1909, together with affidavits in reference to said statement made by R. E. Gery, George A. Parks, and myself, of even date herewith.

Very respectfully,

ELLA M. SHARTELL.

PORTLAND, OREG., February 4, 1910.

The COMMISSIONER GENERAL LAND OFFICE,

Washington, D. C.

SIR: Complying with request contained in a telegram from Assistant Chief of Field Service H. L. Underwood, of February 3, 1910, stating as follows: "Matter mentioned in your wire yesterday re conversation Glavis with McKenzie, have copy made from notes and certified to by stenographer; also make affidavit as to whereabouts original and any knowledge you may have concerning same," I have the honor to transmit herewith the following affidavits:

Copy of affidavit as transcribed by Miss Shartell, to whom the certificate or affidavit made by Special Agent Horace Tillard Jones and L. R. Glavis was dictated. (Exhibit A.)

Affidavit made by said Ella M. Shartell relative to the circumstances under which the certificate or affidavit was dictated to her by Special Agent Jones and L. R. Glavis. (Exhibit B.)

Affidavit of Special Agent Raymond E. Gery concerning his knowledge of the existence of such an affidavit. (Exhibit C.)

Affidavit of Practical Miner George A. Parks concerning his knowledge of the existence of such an affidavit. (Exhibit D.)

Affidavit of myself concerning my knowledge of the existence of such an affidavit. (Exhibit E.)

After the receipt of the above-quoted telegram and after I had directed Miss Shartell to make a copy of the affidavit made by Jones and Glavis from her stenographic notes I called upon Special Agent Jones as to his knowledge of the existence of such an affidavit. He informed me that he did make a certificate or affidavit about September, 1909, relative to this matter and that he had a copy thereof. At my request he produced the copy, and I attach it herewith. (Exhibit F.)

This is one of the three original affidavits which were made by Jones and Glavis at that time.

I also attach an affidavit made by Special Agent Jones relative to this affidavit and to the disposition made of the two others. (Exhibit G.)

Your attention is invited to the fact that this affidavit of Jones and Glavis was in the possession of Jones since it was made until the present. I had no knowledge whatever of its existence.

It is Mr. Jones's understanding that the other two copies were retained by Mr. Glavis, one to be sent to the President in case he called for further proof and the other to be retained by himself, and that they were retained by Mr. Glavis. Therefore, if Mr. Glavis stated that a copy of this affidavit was left in the files of the office, he is evidently mistaken. I would suggest that you call upon Mr. Glavis for the other two original copies of the affidavit.

Very respectfully,

Chief of Field Division.

EXHIBIT A.

STATE OF WASHINGTON, *County of King*, ss:

We, Horace Tillard Jones and L. R. Glavis, special agents in the General Land Office, hereby certify that on or about the evening of June 26, 1909, Mr. D. A. McKenzie, whose post-office address is 305 Colman Building, Seattle, Wash., appeared in our office in the Federal Building at Seattle, for the purpose of making a statement in regard to his knowledge of the Alaska coal cases in which he was very much interested. His testimony was taken by a temporary stenographer of this office, and, during his statement, he said: "Now, this is confidential, and I don't want it to go into the affidavit." He then said, in substance, that when he was in Washington endeavoring to get legislation by Congress to enable the Alaska coal claimants to secure title to their lands that he, on several occasions, conferred with Mr. James R. Garfield, then Secretary of the Interior. That Garfield appeared to be hostile to him and the other Alaska coal claimants. That during one of these conferences Mr. Garfield stated that all of these coal cases were fraudulent, and asked him about his own. That Mr. Garfield's demeanor to these Alaska cases was such that pressure was brought to bear on Senators and Congressmen to prevent his remaining in the Cabinet. That his attitude to the Alaska coal claimants was the real reason for his not being in Mr. Taft's Cabinet. That the Alaska coal claimants wanted somebody who recognized the needs of Alaska.

It was our intention immediately after this statement was made to make affidavit to this effect at the time, but, owing to the large amount of work and the fact that Mr. Jones, a couple of days afterwards, returned to Portland, this statement was not made until now. However, it is very fresh in our minds for the reason that we have both thought of it a number of times, because it impressed us both very much. We commented at the time that if the Alaska coal claimants had sufficient influence to remove a Cabinet officer that we would have to go whenever they desired if our reports did not suit.

On the following Monday, which was June 28, or Tuesday, Mr. McKenzie brought S. W. Eckles, of the Guggenheim syndicate, who was on his way to Alaska, to investigate the properties owned by the Guggenheims. Before bringing Mr. Eckles in Mr. McKenzie stated that he was very anxious for him to learn that we would soon have our reports submitted, and asked that Mr. Eckles be informed as to the progress we are making. During the interview Mr. Eckles stated that the railroad to the Alaska coal fields would cost them about \$2,500,000. That they were prepared to build this railroad, but would not do so until the Government passed on the titles to the coal claims. Mr. Eckles stated that unless the claims were patented that they would not build the railroad, and that this coal was very necessary to them for the operation of their Copper River Railroad and the smelter. We stated to Mr. Eckles that we were now making our reports to the General Land Office, but, of course, could not tell him the nature of our recommendations. Mr. McKenzie stated that they were particularly anxious to know when they would be before the commissioner, since he had assurances from the department that these cases would be given immediate attention.

Signed this 8th day of September, 1909, at Seattle, Washington.

Special Agent, G. L. O.

Chief of Field Division.

STATE OF WASHINGTON, *County of King*, ss:

I, Ella M. Shartell, being first duly sworn, on oath depose and say, that the above and foregoing is a true and correct transcription of the notes dictated to me by L. R. Glavis on the 8th day of September, 1909. That on said date I was employed as stenographer in the office of the seventeenth field division of the General Land Office.

Witness:

Subscribed and sworn to before me this 3d day of February, 1910. _____

EXHIBIT B.

STATE OF WASHINGTON, *County of King*, ss:

Ella M. Shartell, being first duly sworn, on oath deposes and says:

That she is now and has been since the 28th day of June, 1909, employed as stenographer in the 17th field division, G. L. O., with headquarters at Seattle, Washington. That on the 8th day of September, 1909, Mr. L. R. Glavis, then chief of said division, dictated a statement to her, which said statement she has this day transcribed from the notes in her possession, sworn to the exactness of the same, and forwarded to Mr. A. Christensen, Chief of Field Division. That at the taking of said dictation above mentioned the only other person present was Horace Tillard Jones; that said Horace Tillard Jones made suggestions at different times during such dictation; that said dictation was made in the office of the special agents, G. L. O., 219 Federal Building, Seattle, Washington. That immediately after taking said dictation she transcribed the same on the typewriter but at this time does not remember the exact number of copies she made. That since the day of said dictation she has not made any copies of said statement until and excepting those made this 3rd day of February, 1910. That she has never, at any time, seen the original or a copy of said statement in or about the office in Seattle, Washington, or in the possession of any person or persons. That on the 2nd and 3rd days of February, 1910, she made a thorough and complete examination of the files, papers, records and desks, excepting the desk used and occupied by Mr. A. Christensen, when in Seattle, and that she can find neither the original nor a copy of said statement in said office, or a record of the same.

ELLA M. SHARTELL.

Witness:

GEO. A. PARKS.

Subscribed and sworn to before me this 3rd day of February, 1910.

RAYMOND E. GERY,
Special Agent, G. L. O.

EXHIBIT C.

STATE OF WASHINGTON, *County of King*, ss:

Raymond E. Gery, being duly sworn upon his oath, deposes and says:

That he is now and has been since about the 1st day of May, 1909, an employee of the General Land Office, and that during all of said time he has been connected with the seventeenth field division, with headquarters at Seattle, Wash. That during all of said time he has never seen or heard of a statement purporting to have been made by L. R. Glavis and Horace Tillard Jones, made on or about the 8th day of September, 1909, and purporting to contain statements made by Mr. D. A. McKenzie and Mr. S. W. Eccles. That the first knowledge he had of such statement being in existence was through one of the Seattle newspapers. That the first time he ever saw a copy of said statement was on this 3rd day of February, when he took the stenographer's acknowledgment of the correctness of her transcription of the notes thereof.

RAYMOND E. GERY.

Witness:

ELLA M. SHARTELL.

Subscribed and sworn to before me this 3rd day of February, 1910.

GEO. A. PARKS, *Practical Miner*, G. L. O.

EXHIBIT D.

STATE OF WASHINGTON, *County of King*, ss:

George A. Parks, being duly sworn, upon his oath deposes and says:

That he is now and has been ever since the 15th day of July, 1909, an employee of the General Land Office connected with the 17th field division, with headquarters at Seattle, Washington. That during all of said time he has never seen or heard of a statement purporting to have been made by L. R. Glavis and Horace Tillard Jones on or about the 8th day of September, 1909, and purporting to contain statements made by Mr. D. A. McKenzie and Mr. S. W. Eccles. That the first knowledge he had of such statement was through one of the Seattle newspapers. That on the

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2nd day of February, 1910, he assisted Miss Ella M. Shartell in making a thorough search of the Seattle office for such a paper or record thereof. And that he found neither. That on said 2nd of February, 1910, he also examined the papers in possession of Mr. Elmer E. Todd, United States district attorney, and found no copy among said papers or any reference thereto. That the first time he ever saw a copy of said statement was on this 3rd day of February, 1910, when he witnessed Miss Shartell's signature to the transcription of the notes thereof.

GEO. A. PARKS.

Witness:

ELLA M. SHARTELL.

Subscribed and sworn to before me this 3rd day of February, 1910.

RAYMOND E. GERY,
Special Agent, G. L. O.

EXHIBIT E.

STATE OF OREGON, County of Multnomah, ss:

I, Andrew Christensen, of lawful age, being first duly sworn, depose and say:

That I am now and have been since March 27, 1909, employed as chief of first field division of the General Land Office, Department of the Interior, with headquarters at Portland, Oregon; that on September 16, 1909, I received instructions from the Commissioner of the General Land Office to assume charge of all of the records in the office of the chief of the 17th field division of the General Land Office, Department of the Interior, with headquarters at Seattle, Washington; that in accordance with said instructions I assumed charge of said office and immediately proceeded to prepare a receipt for the records to L. R. Glavis, who was then chief of the 17th field division and who was removed from the service on and after September 18, 1909.

That on February 2, 1910, I received a telegram from Assistant Chief of Field Service Underwood, Washington, D. C., which was partly in code words, and when translated reads as follows:

"Joint committee requests the following quote original of affidavit of L. R. Glavis, dated September, 1909, now or formerly in Seattle office, relating to conversation of Glavis with Donald A. McKenzie in re failure of President Taft to appoint Mr. Garfield a member of his Cabinet, end quote. Make diligent search for this affidavit and forward immediately. Answer by wire quick."

This telegram was addressed to me at Seattle, Washington, but as I was in Portland, the stenographer, Miss Ella M. Shartell, who attends to the routine work during my absence, telephoned me at Portland the substance of the telegram. I requested her to make diligent search and if the affidavit could not be found, to wire the Commissioner of the General Land Office to that effect. I also informed her that I had never seen the affidavit in the office of the chief of the 17th field division, Seattle, Washington, and that I had never heard of it before, except through newspaper reports from Washington, D. C., while L. R. Glavis was giving his testimony before the congressional committee on February 2, 1910. Miss Shartell wired the Commissioner of the General Land Office in accordance with my instructions, as follows:

"Original of affidavit of L. R. Glavis relating to conversation of Glavis with Donald A. McKenzie in re failure of President Taft to appoint Mr. Garfield a member of his Cabinet not in office. Have stenographic notes. Can make copy. Advise."

On February 3rd, Mr. Underwood wired me as follows:

"Haje yesterday re conversation of Glavis with McKenzie have copy made from notes and certified to by stenographer; also make affidavit as to whereabouts of original and any knowledge you may have concerning same."

In accordance with said telegram, I instructed Miss Shartell to prepare a copy of the affidavit required, which was done, and has been forwarded to the commissioner this date.

I further aver that neither the original nor a copy of the Jones and Glavis affidavit concerning the conversation with McKenzie have ever been seen in the office of the chief of field division at Seattle, Washington, since I assumed charge thereof on September 16, 1909; that I never had any knowledge of the existence of such an affidavit, and, as before stated, never heard of it until through newspaper dispatches from Washington, D. C. I have had several occasions to carefully search the records of the office of the 17th field division since assuming charge for the reason that it has been found that a large number of the records are missing, which has required both myself and the clerks employed under me to make careful search of all of the records of the division. During all of such searches this affidavit has not been seen, and, as

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before stated, was never in the Seattle office since September 16, 1909, so far as I know, except it may have been in the possession of L. R. Glavis from September 16th to September 18th, while he was in the office assisting in preparing the receipt for the records.

Attached herewith are affidavits made by said Ella M. Shartell, employed as stenographer in the office of the chief of field division, Seattle, and also the affidavits of Special Agent Raymond E. Gery and Practical Miner George A. Parks, all of which show that said affidavit, nor a copy thereof, has not been in the office since September 18, 1909.

After these affidavits had been made and after careful search had been made of the records of the office of the chief of field division, Seattle, Horace Tillard Jones, who is one of the parties to the affidavit, furnished me with a copy thereof, which he stated to me is a true copy of the original. Attached herewith is an affidavit made by Mr. Jones which accounts for the attached copy of the original from the time it was made until delivered to me about 8.30 p. m., February 3, 1910, in the Federal Building, Portland, Oregon.

I find from comparing the copy of the original furnished me by Mr. Jones and the copy furnished me by Miss Shartell that there are slight discrepancies in the wording, but that it is in effect the same. I am unable to account for the discrepancies except that possibly some changes were made in the affidavit after it had been first written by Miss Shartell.

Mr. Jones informed me that there were three copies made of the affidavit, all of which were signed by both himself and L. R. Glavis, and that he understood that L. R. Glavis forwarded a copy of the affidavit to President Taft and that he had retained the other copy. This may account for our failure to find any copy of the affidavit in the office of the chief of field division, Seattle.

A. CHRISTENSEN.

Subscribed and sworn to before me this 4th day of February, 1910.

FRED C. RABB.

EXHIBIT F.

We, Horace Tillard Jones and L. R. Glavis, special agents of the General Land Office, hereby certify that on or about the evening of June 26, 1909, Mr. D. A. McKenzie, whose post-office address is 305 Colman Bldg., Seattle, Wash., appeared in our office in the Federal Bldg., Seattle, for the purpose of making a statement in regard to his knowledge of the Alaska coal cases, in which he was very much interested. His testimony was taken by a temporary stenographer of this office, and during his statement he said, "Now, this is confidential and I don't want it to go down in the affidavit." He then said, in substance, that when he was in Washington endeavoring to get legislation by Congress to enable the Alaska coal claimants to secure title to their lands, that he on several occasions conferred with Mr. James R. Garfield, then Secretary of the Interior; that Mr. Garfield appeared to be hostile to the other Alaska coal cases; that during one of these conferences Mr. Garfield stated that all these coal cases were fraudulent and asked him about his own claim; that Mr. Garfield's demeanor toward these Alaska cases was such that they brought pressure to bear on Senators and Representatives to prevent his remaining in the Cabinet. Mr. McKenzie also stated that Mr. Garfield's attitude toward the Alaska coal cases was the real reason for his not being in Mr. Taft's Cabinet; that the Alaska coal claimants wanted somebody as Secretary of the Interior who recognized the needs of Alaska.

It was our intention after this statement was made to immediately make affidavit to this effect, but, owing to the large amount of work and the fact that Mr. Jones, a few days later, returned to Portland, this statement was not made until now. However, it is very fresh in our minds, for the reason that we have both thought of it a number of times, because it impressed us very much, as we commented at the time that if the Alaska coal claimants had sufficient influence to remove a Cabinet officer that we would be removed from office whenever they desired if our reports did not suit.

On the following Monday, which was June 28th, Mr. McKenzie called to see us with S. W. Eccles, of the Guggenheim syndicate, who was on his way to Alaska to investigate the properties owned by the Guggenheims. Before bringing Mr. Eccles Mr. McKenzie stated that he was very anxious for him to learn that we would soon have our reports submitted and asked that Mr. Eccles be informed as to the progress we were making. During the interview Mr. Eccles stated that the railroad to the Alaska coal fields would cost them about \$2,500,000.00; that they were prepared to build this railroad, but would not do so until the Government passed on the titles to the coal lands; that unless the claims were patented that they would not build the

railroad, and that this coal was very necessary for the operation of their Copper River Railroad and the proposed smelter. Mr. Glavis stated to Mr. Eccles that he was then preparing reports to the General Land Office, but of course could not inform him as to the nature of his recommendations.

Mr. McKenzie stated that they were particularly anxious to know when the matter would be submitted to the commissioner, since he had assurances from the department that these cases would be given immediate attention.

Signed this 8th day of September, 1909, at Seattle, Washington.

HORACE TILLARD JONES, *Special Agent, G. L. O.*
L. R. GLAVIS, *Chief of Field Division.*

EXHIBIT G.

STATE OF OREGON, *County of Multnomah, ss:*

Horace Tillard Jones, being duly sworn, hereby on oath depose:

In September, 1909, I made a certificate with L. R. Glavis to effect that D. A. McKenzie had made certain statements to us as to his influence in having Garfield removed from the Cabinet, etc. Also with respect to conversations with a Mr. Eccles, of Gugenheim syndicate.

This statement or certificate was signed in triplicate by Mr. Glavis & myself & I retained a copy for myself, which I delivered to Andrew Christensen in room 309 P. O. Bldg., Portland, Ore., Feb. 3, 1910.

I understood that the other copies were to be retained by Mr. Glavis, and he did retain them, and I understood that one of the copies was to be forwarded to President Taft in case he called for further proof of the connection Mr. Ballinger had with the Alaska cases.

HORACE TILLARD JONES,
Special Agent G. L. O.

Subscribed and sworn to before me this 4th day of February, 1910.

[SEAL.]

VIVIAN FLEXNER,
Notary Public for Oregon.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Portland, Oregon, February 3, 1910.

Hon. H. H. SCHWARTZ,
Chief of Field Service, Washington, D. C.

SIR: On January 31, 1910, you wired me as follows:

"Joint committee requires [quote] all letters and other papers now or formerly in the Juneau, Alaska, land office relating to the Cunningham claims, so called, and particularly all communications from and copies of all communications to Clarence Cunningham; also all the papers delivered to Special Agent Bowman in 1909, and for which receipt was given by him, including, among others, a letter dated January 15, 1909, from the said Cunningham to the register and receiver of the said office. [End quote.] Forward me immediately all letters and papers in your files or which you can procure, as above required, with explanation as to whereabouts, if you know, of any papers not in your possession."

I desire to invite your attention to the fact that the committee asked for a letter dated January 15, 1909. I assume that this is a mistake, as the letter from Clarence Cunningham is dated January 15, 1908, according to the receipt on file in this office.

I am enclosing herewith all letters enumerated in the attached list, No. 1, which are the only letters now in my possession of those secured from the Juneau office by Special Agent A. R. Bowman in August, 1909. I have no papers whatever relating to the Cunningham claims, so called, for the reason that they are all in the possession of Special Agent Jas. M. Sheridan, who is at this time conducting the hearing in the case.

The letter of January 15, 1908, referred to in the telegram is also in the possession of Special Agent Sheridan.

On February 1, 1910, I wired the register and receiver at Juneau, Alaska, to forward me all letters and papers now in their possession relating to the Cunningham claims, so-called, and, in reply, received the following telegram:

"All papers in Cunningham entries forwarded to commissioner when entry was allowed. No letters on file. January thirtieth forwarded to you at Portland copy

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[Telegram.]

SEATTLE, WASH., Feb. 3rd, 1910.

CHRISTENSEN, 322 Customs-House, Portland, Ore.:

Underwood wires [quote] Baje yesterday re conversation of Glavis with McKenzie. Have copy made from notes and certified to by stenographer; also make affidavit as to whereabouts of original and any knowledge you may have concerning same. [End quote.] Will make copy immediately.

SHARTELL

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Seattle, Wash., February 3, 1910.

Mr. A. CHRISTENSEN,
Chief of Field Division, Portland, Oreg.

SIR: Inclosed herewith is certified copy of statement made by L. R. Glavis and Horace Tillard Jones on September 8, 1909, together with affidavits in reference to said statement made by R. E. Gery, George A. Parks, and myself, of even date herewith.

Very respectfully,

ELLA M. SHARTELL

PORTLAND, OREG., February 4, 1910

The COMMISSIONER GENERAL LAND OFFICE,
Washington, D. C.

SIR: Complying with request contained in a telegram from Assistant Chief of Field Service H. L. Underwood, of February 3, 1910, stating as follows: "Matter mentioned in your wire yesterday re conversation Glavis with McKenzie, have copy made from notes and certified to by stenographer; also make affidavit as to whereabouts original and any knowledge you may have concerning same," I have the honor to transmit herewith the following affidavits:

Copy of affidavit as transcribed by Miss Shartell, to whom the certificate or affidavit made by Special Agent Horace Tillard Jones and L. R. Glavis was dictated. (Exhibit A.)

Affidavit made by said Ella M. Shartell relative to the circumstances under which the certificate or affidavit was dictated to her by Special Agent Jones and L. R. Glavis. (Exhibit B.)

Affidavit of Special Agent Raymond E. Gery concerning his knowledge of the existence of such an affidavit. (Exhibit C.)

Affidavit of Practical Miner George A. Parks concerning his knowledge of the existence of such an affidavit. (Exhibit D.)

Affidavit of myself concerning my knowledge of the existence of such an affidavit. (Exhibit E.)

After the receipt of the above-quoted telegram and after I had directed Miss Shartell to make a copy of the affidavit made by Jones and Glavis from her stenographic notes I called upon Special Agent Jones as to his knowledge of the existence of such an affidavit. He informed me that he did make a certificate or affidavit about September, 1909, relative to this matter and that he had a copy thereof. At my request he produced the copy, and I attach it herewith. (Exhibit F.)

This is one of the three original affidavits which were made by Jones and Glavis at that time.

I also attach an affidavit made by Special Agent Jones relative to this affidavit and to the disposition made of the two others. (Exhibit G.)

Your attention is invited to the fact that this affidavit of Jones and Glavis was in the possession of Jones since it was made until the present. I had no knowledge whatever of its existence.

It is Mr. Jones's understanding that the other two copies were retained by Mr. Glavis, one to be sent to the President in case he called for further proof and the other to be retained by himself, and that they were retained by Mr. Glavis. Therefore, if Mr. Glavis stated that a copy of this affidavit was left in the files of the office, he is evidently mistaken. I would suggest that you call upon Mr. Glavis for the other two original copies of the affidavit.

Very respectfully,

Chief of Field Division.

EXHIBIT A.

STATE OF WASHINGTON, *County of King*, ss:

We, Horace Tillard Jones and L. R. Glavis, special agents in the General Land Office, hereby certify that on or about the evening of June 26, 1909, Mr. D. A. McKenzie, whose post-office address is 305 Colman Building, Seattle, Wash., appeared in our office in the Federal Building at Seattle, for the purpose of making a statement in regard to his knowledge of the Alaska coal cases in which he was very much interested. His testimony was taken by a temporary stenographer of this office, and, during his statement, he said: "Now, this is confidential, and I don't want it to go into the affidavit." He then said, in substance, that when he was in Washington endeavoring to get legislation by Congress to enable the Alaska coal claimants to secure title to their lands that he, on several occasions, conferred with Mr. James R. Garfield, then Secretary of the Interior. That Garfield appeared to be hostile to him and the other Alaska coal claimants. That during one of these conferences Mr. Garfield stated that all of these coal cases were fraudulent, and asked him about his own. That Mr. Garfield's demeanor to these Alaska cases was such that pressure was brought to bear on Senators and Congressmen to prevent his remaining in the Cabinet. That his attitude to the Alaska coal claimants was the real reason for his not being in Mr. Taft's Cabinet. That the Alaska coal claimants wanted somebody who recognized the needs of Alaska.

It was our intention immediately after this statement was made to make affidavit to this effect at the time, but, owing to the large amount of work and the fact that Mr. Jones, a couple of days afterwards, returned to Portland, this statement was not made until now. However, it is very fresh in our minds for the reason that we have both thought of it a number of times, because it impressed us both very much. We commented at the time that if the Alaska coal claimants had sufficient influence to remove a Cabinet officer that we would have to go whenever they desired if our reports did not suit.

On the following Monday, which was June 28, or Tuesday, Mr. McKenzie brought S. W. Eckles, of the Guggenheim syndicate, who was on his way to Alaska, to investigate the properties owned by the Guggenheims. Before bringing Mr. Eckles in Mr. McKenzie stated that he was very anxious for him to learn that we would soon have our reports submitted, and asked that Mr. Eckles be informed as to the progress we are making. During the interview Mr. Eckles stated that the railroad to the Alaska coal fields would cost them about \$2,500,000. That they were prepared to build this railroad, but would not do so until the Government passed on the titles to the coal claims. Mr. Eckles stated that unless the claims were patented that they would not build the railroad, and that this coal was very necessary to them for the operation of their Copper River Railroad and the smelter. We stated to Mr. Eckles that we were now making our reports to the General Land Office, but, of course, could not tell him the nature of our recommendations. Mr. McKenzie stated that they were particularly anxious to know when they would be before the commissioner, since he had assurances from the department that these cases would be given immediate attention.

Signed this 8th day of September, 1909, at Seattle, Washington.

Special Agent, G. L. O.

Chief of Field Division.

STATE OF WASHINGTON, *County of King*, ss:

I, Ella M. Shartell, being first duly sworn, on oath depose and say, that the above and foregoing is a true and correct transcription of the notes dictated to me by L. R. Glavis on the 8th day of September, 1909. That on said date I was employed as stenographer in the office of the seventeenth field division of the General Land Office.

Witness:

Subscribed and sworn to before me this 3d day of February, 1910. _____

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EXHIBIT B.

STATE OF WASHINGTON, *County of King, ss:*

Ella M. Shartell, being first duly sworn, on oath deposes and says:

That she is now and has been since the 28th day of June, 1909, employed as stenographer in the 17th field division, G. L. O., with headquarters at Seattle, Washington. That on the 8th day of September, 1909, Mr. L. R. Glavis, then chief of said division, dictated a statement to her, which said statement she has this day transcribed from the notes in her possession, sworn to the exactness of the same, and forwarded to Mr. A. Christensen, Chief of Field Division. That at the taking of said dictation above mentioned the only other person present was Horace Tillard Jones; that said Horace Tillard Jones made suggestions at different times during such dictation; that said dictation was made in the office of the special agents, G. L. O., 219 Federal Building, Seattle, Washington. That immediately after taking said dictation she transcribed the same on the typewriter but at this time does not remember the exact number of copies she made. That since the day of said dictation she has not made any copies of said statement until and excepting those made this 3rd day of February, 1910. That she has never, at any time, seen the original or a copy of said statement in or about the office in Seattle, Washington, or in the possession of any person or persons. That on the 2nd and 3rd days of February, 1910, she made a thorough and complete examination of the files, papers, records and desks, excepting the desk used and occupied by Mr. A. Christensen, when in Seattle, and that she can find neither the original nor a copy of said statement in said office, or a record of the same.

ELLA M. SHARTELL.

Witness:

GEO. A. PARKS.

Subscribed and sworn to before me this 3rd day of February, 1910.

RAYMOND E. GERY,
Special Agent, G. L. O.

EXHIBIT C.

STATE OF WASHINGTON, *County of King, ss:*

Raymond E. Gery, being duly sworn upon his oath, deposes and says:

That he is now and has been since about the 1st day of May, 1909, an employee of the General Land Office, and that during all of said time he has been connected with the seventeenth field division, with headquarters at Seattle, Wash. That during all of said time he has never seen or heard of a statement purporting to have been made by L. R. Glavis and Horace Tillard Jones, made on or about the 8th day of September, 1909, and purporting to contain statements made by Mr. D. A. McKenzie and Mr. S. W. Eckles. That the first knowledge he had of such statement being in existence was through one of the Seattle newspapers. That the first time he ever saw a copy of said statement was on this 3rd day of February, when he took the stenographer's acknowledgment of the correctness of her transcription of the notes thereof.

RAYMOND E. GERY.

Witness:

ELLA M. SHARTELL.

Subscribed and sworn to before me this 3rd day of February, 1910.

GEO. A. PARKS, *Practical Miner, G. L. O.*

EXHIBIT D.

STATE OF WASHINGTON, *County of King, ss:*

George A. Parks, being duly sworn, upon his oath deposes and says:

That he is now and has been ever since the 15th day of July, 1909, an employee of the General Land Office connected with the 17th field division, with headquarters at Seattle, Washington. That during all of said time he has never seen or heard of a statement purporting to have been made by L. R. Glavis and Horace Tillard Jones on or about the 8th day of September, 1909, and purporting to contain statements made by Mr. D. A. McKenzie and Mr. S. W. Eccles. That the first knowledge he had of such statement was through one of the Seattle newspapers. That on the

nd day of February, 1910, he assisted Miss Ella M. Shartell in making a thorough search of the Seattle office for such a paper or record thereof. And that he found neither. That on said 2nd of February, 1910, he also examined the papers in possession of Mr. Elmer E. Todd, United States district attorney, and found no copy among said papers or any reference thereto. That the first time he ever saw a copy of said statement was on this 3rd day of February, 1910, when he witnessed Miss Shartell's signature to the transcription of the notes thereof.

GEO. A. PARKS.

Witness:

ELLA M. SHARTELL.

Subscribed and sworn to before me this 3rd day of February, 1910.

RAYMOND E. GERY,
Special Agent, G. L. O.

EXHIBIT E.

STATE OF OREGON, County of Multnomah, ss:

I, Andrew Christensen, of lawful age, being first duly sworn, depose and say:

That I am now and have been since March 27, 1909, employed as chief of first field division of the General Land Office, Department of the Interior, with headquarters at Portland, Oregon; that on September 18, 1909, I received instructions from the Commissioner of the General Land Office to assume charge of all of the records in the office of the chief of the 17th field division of the General Land Office, Department of the Interior, with headquarters at Seattle, Washington; that in accordance with said instructions I assumed charge of said office and immediately proceeded to prepare a receipt for the records to L. R. Glavis, who was then chief of the 17th field division and who was removed from the service on and after September 18, 1909.

That on February 2, 1910, I received a telegram from Assistant Chief of Field Service Underwood, Washington, D. C., which was partly in code words, and when translated reads as follows:

"Joint committee requests the following quote original of affidavit of L. R. Glavis, dated September, 1909, now or formerly in Seattle office, relating to conversation of Glavis with Donald A. McKenzie in re failure of President Taft to appoint Mr. Garfield a member of his Cabinet, end quote. Make diligent search for this affidavit and forward immediately. Answer by wire quick."

This telegram was addressed to me at Seattle, Washington, but as I was in Portland, the stenographer, Miss Ella M. Shartell, who attends to the routine work during my absence, telephoned me at Portland the substance of the telegram. I requested her to make diligent search and if the affidavit could not be found, to wire the Commissioner of the General Land Office to that effect. I also informed her that I had never seen the affidavit in the office of the chief of the 17th field division, Seattle, Washington, and that I had never heard of it before, except through newspaper reports from Washington, D. C., while L. R. Glavis was giving his testimony before the congressional committee on February 2, 1910. Miss Shartell wired the Commissioner of the General Land Office in accordance with my instructions, as follows:

"Original of affidavit of L. R. Glavis relating to conversation of Glavis with Donald A. McKenzie in re failure of President Taft to appoint Mr. Garfield a member of his Cabinet not in office. Have stenographic notes. Can make copy. Advise."

On February 3rd, Mr. Underwood wired me as follows:

"Baje yesterday re conversation of Glavis with McKenzie have copy made from notes and certified to by stenographer; also make affidavit as to whereabouts of original and any knowledge you may have concerning same."

In accordance with said telegram, I instructed Miss Shartell to prepare a copy of the affidavit required, which was done, and has been forwarded to the commissioner this date.

I further aver that neither the original nor a copy of the Jones and Glavis affidavit concerning the conversation with McKenzie have ever been seen in the office of the chief of field division at Seattle, Washington, since I assumed charge thereof on September 18, 1909; that I never had any knowledge of the existence of such an affidavit, and, as before stated, never heard of it until through newspaper dispatches from Washington, D. C. I have had several occasions to carefully search the records of the office of the 17th field division since assuming charge for the reason that it has been found that a large number of the records are missing, which has required both myself and the clerks employed under me to make careful search of all of the records of the division. During all of such searches this affidavit has not been seen, and, as

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before stated, was never in the Seattle office since September 18, 1909, so far as I know, except it may have been in the possession of L. R. Glavis from September 18th to September 18th, while he was in the office assisting in preparing the receipt for the records.

Attached herewith are affidavits made by said Ella M. Shartell, employed as stenographer in the office of the chief of field division, Seattle, and also the affidavits of Special Agent Raymond E. Gery and Practical Miner George A. Parks, all of which show that said affidavit, nor a copy thereof, has not been in the office since September 18, 1909.

After these affidavits had been made and after careful search had been made of the records of the office of the chief of field division, Seattle, Horace Tillard Jones, who is one of the parties to the affidavit, furnished me with a copy thereof, which he stated to me is a true copy of the original. Attached herewith is an affidavit made by Mr. Jones which accounts for the attached copy of the original from the time it was made until delivered to me about 8.30 p. m., February 3, 1910, in the Federal Building, Portland, Oregon.

I find from comparing the copy of the original furnished me by Mr. Jones and the copy furnished me by Miss Shartell that there are slight discrepancies in the wording, but that it is in effect the same. I am unable to account for the discrepancies except that possibly some changes were made in the affidavit after it had been first written by Miss Shartell.

Mr. Jones informed me that there were three copies made of the affidavit, all of which were signed by both himself and L. R. Glavis, and that he understood that L. R. Glavis forwarded a copy of the affidavit to President Taft and that he had retained the other copy. This may account for our failure to find any copy of the affidavit in the office of the chief of field division, Seattle.

A. CHRISTENSEN.

Subscribed and sworn to before me this 4th day of February, 1910.

FRED C. RABB.

EXHIBIT F.

We, Horace Tillard Jones and L. R. Glavis, special agents of the General Land Office, hereby certify that on or about the evening of June 28, 1909, Mr. D. A. McKenzie, whose post-office address is 305 Colman Bldg., Seattle, Wash., appeared in our office in the Federal Bldg., Seattle, for the purpose of making a statement in regard to his knowledge of the Alaska coal cases, in which he was very much interested. His testimony was taken by a temporary stenographer of this office, and during his statement he said, "Now, this is confidential and I don't want it to go down in the affidavit." He then said, in substance, that when he was in Washington endeavoring to get legislation by Congress to enable the Alaska coal claimants to secure title to their lands that he on several occasions conferred with Mr. James R. Garfield, then Secretary of the Interior; that Mr. Garfield appeared to be hostile to the other Alaska coal cases, that during one of these conferences Mr. Garfield stated that all these coal cases were fraudulent and asked him about his own claim; that Mr. Garfield's demeanor toward these Alaska cases was such that they brought pressure to bear on Senators and Representatives to prevent his remaining in the Cabinet. Mr. McKenzie also stated that Mr. Garfield's attitude toward the Alaska coal cases was the real reason for his not being in Mr. Taft's Cabinet; that the Alaska coal claimants wanted somebody as Secretary of the Interior who recognized the needs of Alaska.

It was our intention after this statement was made to immediately make affidavits to this effect, but, owing to the large amount of work and the fact that Mr. Jones, a few days later, returned to Portland, this statement was not made until now. However, it is very fresh in our minds, for the reason that we have both thought of it a number of times, because it impressed us very much, as we commented at the time that if the Alaska coal claimants had sufficient influence to remove a Cabinet officer that we would be removed from office whenever they desired if our reports did not suit.

On the following Monday, which was June 28th, Mr. McKenzie called to see us with S. W. Eccles, of the Guggenheim syndicate, who was on his way to Alaska to investigate the properties owned by the Guggenheims. Before bringing Mr. Eccles Mr. McKenzie stated that he was very anxious for him to learn that we would soon have our reports submitted and asked that Mr. Eccles be informed as to the progress we were making. During the interview Mr. Eccles stated that the railroad to the Alaska coal fields would cost them about \$2,500,000.00; that they were prepared to build this railroad, but would not do so until the Government passed on the titles to the coal lands; that unless the claims were patented that they would not build the

ailroad, and that this coal was very necessary for the operation of their Copper River railroad and the proposed smelter. Mr. Glavis stated to Mr. Eccles that he was then preparing reports to the General Land Office, but of course could not inform him as to the nature of his recommendations.

Mr. McKenzie stated that they were particularly anxious to know when the matter could be submitted to the commissioner, since he had assurances from the department that these cases would be given immediate attention.

Signed this 8th day of September, 1909, at Seattle, Washington.

HORACE TILLARD JONES, *Special Agent, G. L. O.*
L. R. GLAVIS, *Chief of Field Division.*

EXHIBIT G.

STATE OF OREGON, *County of Multnomah, ss:*

Horace Tillard Jones, being duly sworn, hereby on oath depose:

In September, 1909, I made a certificate with L. R. Glavis to effect that D. A. McKenzie had made certain statements to us as to his influence in having Garfield removed from the Cabinet, etc. Also with respect to conversations with a Mr. Eccles, of Gugenheim syndicate.

This statement or certificate was signed in triplicate by Mr. Glavis & myself & I retained a copy for myself, which I delivered to Andrew Christensen in room 309 P. O. Bldg., Portland, Ore., Feb. 3, 1910.

I understood that the other copies were to be retained by Mr. Glavis, and he did retain them, and I understood that one of the copies was to be forwarded to President Taft in case he called for further proof of the connection Mr. Ballinger had with the Alaska cases.

HORACE TILLARD JONES,
Special Agent G. L. O.

Subscribed and sworn to before me this 4th day of February, 1910.

[SEAL.]

VIVIAN FLEXNER,
Notary Public for Oregon.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Portland, Oregon, February 3, 1910.

Hon. H. H. SCHWARTZ,
Chief of Field Service, Washington, D. C.

SIR: On January 31, 1910, you wired me as follows:

"Joint committee requires [quote] all letters and other papers now or formerly in the Juneau, Alaska, land office relating to the Cunningham claims, so called, and particularly all communications from and copies of all communications to Clarence Cunningham; also all the papers delivered to Special Agent Bowman in 1909, and for which receipt was given by him, including, among others, a letter dated January 15, 1909, from the said Cunningham to the register and receiver of the said office. [End quote.] Forward me immediately all letters and papers in your files or which you can procure, as above required, with explanation as to whereabouts, if you know, of any papers not in your possession."

I desire to invite your attention to the fact that the committee asked for a letter dated January 15, 1909. I assume that this is a mistake, as the letter from Clarence Cunningham is dated January 15, 1908, according to the receipt on file in this office.

I am enclosing herewith all letters enumerated in the attached list, No. 1, which are the only letters now in my possession of those secured from the Juneau office by Special Agent A. R. Bowman in August, 1909. I have no papers whatever relating to the Cunningham claims, so called, for the reason that they are all in the possession of Special Agent Jas. M. Sheridan, who is at this time conducting the hearing in the case.

The letter of January 15, 1908, referred to in the telegram is also in the possession of Special Agent Sheridan.

On February 1, 1910, I wired the register and receiver at Juneau, Alaska, to forward me all letters and papers now in their possession relating to the Cunningham claims, so-called, and, in reply, received the following telegram:

"All papers in Cunningham entries forwarded to commissioner when entry was allowed. No letters on file. January thirtieth forwarded to you at Portland copy

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of Bowman's receipt for one hundred seven letters relating to Cunningham and other claims. Will send copy of communications to Cunningham February sixth, together with favorable report of Love as to Cunningham claims, together with copy of register's notice of proof."

Some of the letters received by Special Agent Bowman from the Juneau office in August, 1909, have disappeared and were not in the office of the chief of field division at Seattle, Washington, at the time I receipted to former Chief of Field Division Glavis for the records. The original carbon copy of Bowman's receipt to the Juneau office is now in the possession of Special Agent Sheridan. Relative to the disappearance of said letters I have to make the following statement:

List 2, attached hereto, is a list of letters received from the Juneau office by Special Agent Bowman. This, however, is not a correct list, for the reason that there were a number of letters in the package which were not enumerated by Mr. Bowman.

List 3 is a list of letters which I sent to Chief of Field Division S. J. Colter, at Duluth, Minn., on October 6, 1909, for his use in connection with the investigation of what is known as the "Foster" and "Watson" groups of Alaska coal claims.

List 4 contains a list of letters which were in the envelope containing letters received from the Juneau, Alaska, office by Special Agent Bowman, which were not enumerated in his receipt. These letters are included in lists 1 and 3.

The letter dated September 20, 1909, marked "Exhibit A," contains a list of 24 letters which were enumerated in Bowman's receipt to the Juneau office and which were missing at the time I receipted to Glavis for the records of the office when he was separated from the service. Three of the letters listed have subsequently been accounted for, namely:

Letter, January 15, 1908 (which is marked telegram in the letter), from Clarence Cunningham, was returned to me on the morning of September 20, 1909, by Glavis, with a large number of other letters and telegrams, after I had been compelled to threaten to prosecute him for his failure to turn over the records of the office. I attach hereto a copy of my letter dated September 19, 1909, marked "Exhibit B," in which I made my formal demand upon Glavis.

Letters from Archie W. Shiels of August 24, 1907, and A. H. Wheatley, November 8, 1907, have since been returned to the files, but I am unable to state from what source they were received, or when they were returned. When Special Agent Sheridan checked the contents of the envelope on October 18, 1909, he found that the said two letters were in the envelope. This was the first time that I saw them.

I also find, upon checking the list to-day, that the following letters are missing:

S. E. Chezum, June 29, 1906.
A. H. Stracey, December 2, 1905.
W. M. Baker, March 27, 1906.
John W. Hartline, May 15, 1906.
Walter M. French, July 19, 1907.
M. A. Green, December 28, 1908.
Frank Watson, October 26, 1907.

I believe that the letters from Chezum, Baker, and possibly Hartline, are now in possession of Mr. Sheridan, as they relate to the Cunningham entries. It may be that the letter from A. H. Stracey, dated December 2, 1905, is the same as the one enumerated in Bowman's receipt, as dated December 12, 1905, and the letter from Green, dated December 28, 1908, may be the same as the letter dated December 28, 1908, from Green, enumerated in Bowman's receipt. The telegram from French, July 19, 1907, may be confirmed in the letter from French of the same date, enumerated in Bowman's receipt. It appears that Frank Watson wrote two letters on October 26, 1907, but only one of them can be found at this time. It is possible that this letter is now in possession of Mr. Colter, and was not set forth in his receipt to me.

The 21 letters missing of the 24 set forth in my letter of September 20, 1909, to Glavis, marked "Exhibit A," have been the subject of very thorough investigation from the time the office was turned over to me until the present time, but no clue whatever of their present whereabouts has been found, although it does appear from recent articles published in Collier's that either these letters are now in the possession of Collier's, or copies thereof.

The investigations concerning the loss of these papers have developed the following facts:

On August 6, 1909, Special Agent A. R. Bowman was in Alaska under instructions from L. R. Glavis, then chief of the seventeenth field division. At that time he secured from the register and receiver of the Juneau land office the written communications set forth in list 2 attached hereto. These communications were addressed to the

- 7-29-07. Letter, Than Kelly to John W. Dudley, Juneau, Alaska.
 7-19-07. Letter, Walter M. French to J. W. Dudley, register, United States land office, Juneau, Alaska.
 6-28-07. Letter, Emma Bergstrom to register and receiver, Juneau, Alaska.
 6-25-07. Letter, with additional letter attached, relinquishing rights, etc., C. G. Laberre to land office, Juneau.
 2-17-08. Letter, E. W. Senior to register and receiver, United States land office Juneau, Alaska.
 2-5-08. Letter, E. W. Senior to register and receiver, United States land office, Juneau, Alaska.
 1-16-06. Letter, Frank Watson to P. M. Mullin, land office, Juneau, Alaska.
 11-6-07. Letter, A. H. Wheatley to P. M. Mullin, land office, Juneau, Alaska.
 7-3-09. Letter, F. C. Robertson to P. M. Mullin, land office, Juneau, Alaska.
 12-5-08. Letter, F. C. Robertson to P. M. Mullin, land office, Juneau, Alaska.
 7-19-07. Letter, P. M. Mullin to J. B. Munley, Frinter Bay, Alaska.
 2-12-06. Letter, P. M. Mullin to J. B. Munley, Spokane, Wash.
 10-6-08. Letter, Frank Watson to John W. Dudley, Juneau, Alaska.
 9-10-08. Letter, Frank Watson to P. M. Mullin, Juneau, Alaska.
 7-22-07. Letter, Frank Watson to P. M. Mullin, Juneau, Alaska.
 7-22-07. Telegram, Frank Watson to P. M. Mullen, Juneau, Alaska.
 6-18-07. Letter, Geo. W. Ross to John W. Dudley, Juneau, Alaska.
 7-6-07. Letter, F. J. Hoagland to John W. Dudley, Juneau, Alaska.
 5-21-07. Letter, John F. Reed to register and receiver, Juneau, Alaska.
 4-14-05. Letter, J. D. Meenach to C. W. Mullen, land office, Juneau, Alaska.
 11-24-05. Letter, M. S. Duffield to P. M. Mullen, Juneau, Alaska.
 3-29-07. Letter, Than Kelly to John W. Dudley, Juneau, Alaska.
 5-11-07. Letter, Frank Watson to P. M. Mullen, Juneau, Alaska.
 12-29-06. Letter, Than Kelly to U. S. land commissioner, Juneau.
 1-8-07. Letter, Than Kelly to U. S. recorder, Juneau, Alaska.
 11-3-06. Letter, Than Kelly to U. S. land commissioner, Juneau.
 10-16-06. Letter, R. S. Ryan to P. L. Mullen, Juneau, Alaska.
 9-19-06. Letter, R. S. Ryan to P. M. Mullen, Juneau, Alaska.
 9-5-06. Letter, Robert A. Foster to John W. Dudley, Juneau.
 9-5-06. Letter, Robert A. Foster to John W. Dudley, Juneau.
 9-5-06. Letter, Robert A. Foster to receiver, land office, Juneau.
 7-23-07. Letter, R. J. McChesney to Mr. Mullen, Juneau.
 7-5-07. Letter, John J. Folstad to P. M. Mullen, Juneau.
 2-23-07. Letter, Frank Watson to P. M. Mullen, Juneau, Alaska.
 2-25-07. Letter, Frank Watson to P. M. Mullen, Juneau, Alaska.
 2-27-07. Letter, Frank Watson to P. M. Mullen, Juneau, Alaska.
 3-5-07. Letter, Frank Watson to P. M. Mullen, Juneau, Alaska.
 3-5-07. Letter, Frank Watson to P. M. Mullen, Juneau, Alaska.
 3-6-07. Letter, Frank Watson to P. M. Mullen, Juneau, Alaska.
 Officials United States land office, Juneau, Alaska: Register, J. W. Dudley; receiver, P. M. Mullen.

12-14.—List of letters received by Special Agent A. R. Bowman from the Juneau, Alaska, land office, but not listed in his receipt.

- 6-12-05. Letter, A. H. Stracey to P. M. Mullen, esq., Juneau, Alaska.
 7-11-05. Letter, Fred Lind to P. M. Mullen, receiver U. S. L. O.
 7-11-05. Letter, Torger A. Feed to P. M. Mullen, esq., Juneau, Alaska.
 7-13-05. Letter, Walfred Dahlgren to P. M. Mullen, esq., Juneau, Alaska.
 7-15-05. Letter, Torger A. Feed, Seattle, to P. M. Mullen, esq., Juneau, Alaska.
 9-15-05. Letter, Torger A. Feed to Mr. P. M. Mullen, receiver U. S. Land Office, Juneau, Alaska.
 11-1-05. Letter, C. Christopher to Jno. W. Dudley, esq., register U. S. Land Office.
 11-23-05. Letter J. W. Caldwell to Jno. W. Dudley, register; & P. M. Mullen, receiver, Juneau, Alaska.
 12-12-05. Letter, A. H. Stracey to register & receiver, U. S. Land Office, Juneau, Alaska.
 1-10-06. Letter, C. Christopher to Jno. W. Dudley, esq., register U. S. Land Office, Juneau, Alaska.

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After said envelope was left in the satchel by Mr. Bowman, no one but Mr. Glavis could have removed it therefrom, because, so far as I know, its existence was not known to anyone in the office until it was given to Miss Schwinnon by Mr. Glavis. Therefore, the conclusion must be that the satchel was opened and the papers removed therefrom by Mr. Glavis. He was the one responsible for its custody until I receipted for the records, and as the papers were not in the office at the time I receipted for the records, he is the one that should be called upon to explain their present whereabouts. This is particularly so for the reason that he has been aiding and assisting Collier's in the publication of articles in which a number of these missing letters have been quoted.

Very respectfully,

A. CHRISTENSEN,
Chief of Field Division

P. S.—All of the papers mentioned in the telegram from the register and receiver at Juneau, will be forwarded as soon as they are received.

A. C.

List 1.

- 4-20-05. Letter, Geo. W. H. White, Seattle, to registrar, U. S. land office, Juneau, Alaska.
- 6-1-05. Letter, Torger A. Feed, Seattle, to register and receiver of U. S. land office, Juneau, Alaska.
- 6-3-05. Letter, A. H. Stracey, Kayak, Alaska, to P. M. Mullen, esqre., receiver land office, Juneau, Alaska.
- 6-4-05. Letter, Torger A. Feed, Seattle, to receiver U. S. land, Juneau, Alaska.
- 6-12-05. Letter, A. H. Stracey, Kayak, Alaska, to P. M. Mullen, esqre., receiver land office, Juneau, Alaska. (*)
- 6-12-05. Letter, A. H. Stracey, Kayak, Alaska, to P. M. Mullen, esqre., Juneau, Alaska (attached to *).
- 6-12-05. Letter, A. H. Stracey, Kayak, Alaska, to John W. Dudley, esqre., register land office, Juneau, Alaska.
- 6-19-05. Letter, Torger A. Feed, Seattle, to P. M. Mullen, receiver U. S. land, Juneau, Alaska.
- 7-3-05. Letter, W. V. Rinehart, Secy. Alaska Anthracite Coal Co., Seattle, to register land office, Juneau, Alaska.
- 7-11-05. Letter, A. H. Stracey, Kayak, to Mr. P. M. Mullen, U. S. land office, Juneau.
- 7-11-05. Letter, Torger A. Feed, Seattle, to P. M. Mullen, esq., receiver of U. S. land, Juneau, Alaska.
- 7-11-05. Letter, Fred Lind, Seattle, to P. M. Mullen, receiver U. S. L. O.
- 7-11-05. Letter, Torger A. Feed, Seattle, to P. M. Mullen, esq., Juneau, Alaska.
- 7-13-05. Letter, Walfred Dahlgren, Wilson Creek, Wn., to P. M. Mullen, esq., Juneau, Alaska.
- 7-15-05. Letter, Torger A. Feed, Seattle, to P. M. Mullen, esq., Juneau, Alaska.
- 7-17-05. Letter, W. V. Rinehart, secy. Alaska Anthracite Coal Co., Seattle, to Hon. John W. Dudley, register U. S. land office, Juneau, Alaska.
- 8-1-05. Letter, W. V. Rinehart, Seattle, to hon. register U. S. land office, Juneau, Alaska.
- 8-8-05. Letter, M. A. Green, Kayak, to receiver U. S. land office, Juneau, Alaska.
- 8-9-05. Letter, W. V. Rinehart, to Hon. John W. Dudley, register land office, Juneau, Alaska.
- 8-15-05. Letter, Torger A. Feed, Seattle, to Mr. P. M. Mullen, receiver U. S. land office, Juneau, Alaska.
- 8-31-05. Letter, W. V. Rinehart, Seattle, to Hon. John W. Dudley, register U. S. land office, Juneau, Alaska.
- 9-2-05. Letter, Torger A. Feed, Seattle, to P. M. Mullen, esq., receiver U. S. land office, Juneau, Alaska.
- 9-8-05. Letter, W. V. Rinehart, Seattle, to Hon. J. W. Dudley, register U. S. land office, Juneau, Alaska.
- 9-14-05. Letter, Chas. F. Munday, Seattle, to Hon. John W. Dudley, register U. S. land office, Juneau, Alaska.
- 10-6-05. Letter, W. V. Rinehart, Seattle, to Hon. J. W. Dudley, register U. S. land office, Juneau, Alaska.
- 10-27-05. Letter, C. Christopher, Seattle, to John W. Dudley, esq., register U. S. land office, Juneau, Alaska.

EXHIBIT A.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Seattle, Wash., September 20, 1909.

Mr. LOUIS R. GLAVIS,
Lincoln Hotel, Seattle, Washington.

SIR: In the list of letters received by Special Agent Arthur R. Bowman from the land office at Juneau, Alaska, the following letters are missing:

12-31-06. Wendell McLaughlin.	8- 3-07. Thos. Payne.
8-24-07. Archie W. Shields.	9-26-07. Clarence Cunningham.
11- 8-07. A. N. Wheatley.	12-11-07. Clarence Cunningham.
12-23-07. W. S. Yearsley.	6- 3-08. James D. Finch.
5- 9-08. Clarence Cunningham.	3-10-08. Clarence Cunningham.
3-19-08. Clarence Cunningham.	5-23-08. Wm. Sulzer.
4- 3-08. Frank Watson.	4-13-08. Clarence Cunningham.
3-14-08. Clarence Cunningham.	3-12-08. H. R. Haftrman.
1- 7-08. Arthur D. Jones.	1- 9-08. Clarence Cunningham.
1-15-08. Clarence Cunningham.	(telegram).
(telegram).	1- 4-08. A. N. Wheatley.
12-23-08. R. A. Ballinger.	4-19-09. Walter M. French.
4-23-08. M. A. Green.	1- 7-09. M. A. Green.

I respectfully request that you advise me, if possible, what disposition was made of them and where they can be found.

Very respectfully,

A. CHRISTENSEN,
Chief of Field Division.

[Telegram.]

WASHINGTON, D. C., Feb. 4, '10.

A. CHRISTENSEN,
Chief of Field Divn., Custom House, Portland.

Send letter Todd to Glavis, about May, nineteen eight, re criminal prosecution Alaska case.

DENNETT, Commr.

[Transmits original of letter from U. S. Atty. Elmer E. Todd to L. R. Glavis, dated May 18, 1908, in Christopher group. A. C.]

SEATTLE, WASHINGTON, February 4, 1910.

COMMISSIONER GENERAL LAND OFFICE,
Washington, D. C.

SIR: Attached herewith is the original of the letter, dated May 18, 1908, from United States Attorney Elmer E. Todd to Louis R. Glavis, former Chief of Field Division, in reference to a criminal prosecution being instituted in what is known as the Christopher group of Alaska coal claims.

Very respectfully,

Chief of Field Division.

PORTLAND, OREGON, February 5, 1910.

Hon. H. H. SCHWARTZ,
Chief of Field Service, Washington, D. C.

SIR: Referring to my letter to you of February 3, 1910, with which I transmitted a number of letters written to the Juneau, Alaska, land office by several of the coal claimants and its correspondents, and in which I advised you of the loss of a number of letters. I have the honor to transmit herewith a copy of letter just received from C. B. Walker, who assumed duty as register of that office on January 21, 1910; also copy of the receipt furnished the Juneau office by Bowman.

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List 2.

Letters received in the Juneau land office relating to the Alaska coal cases:

4-20-05. Geo. W. H. White.	6-25-07. O. G. Larabee and R. J. Larabee
4-14-05. J. D. Munach.	6-28-07. Emma Bergstrom.
6-3-05. A. H. Stracey.	7-19-07. Walter M. French (telegram).
6-1-05. Torger A. Feed.	7-19-07. Walter M. French (letter).
6-4-05. Torger A. Feed.	7-23-07. R. J. McCheeney.
6-12-05. A. H. Stracey.	7-29-07. Than Kelly.
6-12-05. A. H. Stracey.	12-28[26]-08. M. A. Green.
6-19-05. Torger A. Feed.	8-3-07. Thos. Payne.
7-3-05. W. V. Rinehart.	8-24-07. Archie W. Shields.
7-11-05. A. H. Stracey.	9-16-07. Than Kelly.
7-11-05. Torger A. Feed.	9-26-07. Clarence Cunningham.
7-17-05. W. V. Rinehart.	10-26-07. Frank Watson.
8-1-05. W. V. Rinehart.	10-26-07. Frank Watson.
8-9-05. W. V. Rinehart.	11-8-07. A. H. Wheatley.
8-8-05. M. A. Green.	12-11-07. Clarence Cunningham.
8-31-05. W. V. Rinehart.	12-23-07. W. S. Yearsley.
9-2-05. Torger A. Feed.	6-3-08. James D. Finch.
9-8-05. W. V. Rinehart.	5-9-08. Clarence Cunningham.
9-14-05. Chas. F. Munday.	3-10-08. Clarence Cunningham.
10-6-05. W. V. Rinehart.	3-19-08. Clarence Cunningham.
10-27-05. C. Christopher.	5-23-08. Wm. Sulzer.
10-30-05. S. C. Chezum.	5-19-08. Freeman G. Palmer.
11-24-05. M. S. Duffield.	5-22-08. Geo. Simmonds.
12-7-05. C. Christopher.	5-1-08. Philip McElhone.
12-2[12]-05. A. H. Stracey.	4-24-08. Frank Watson.
1-25-06. C. Christopher.	4-3-08. Frank Watson.
3-27-06. W. W. Baker.	4-13-08. Clarence Cunningham.
5-15-06. John W. Hartline.	10-30-07. G. T. Barrett.
8-2-07. W. V. Rinehart.	3-14-08. Clarence Cunningham.
6-29-06. S. C. Chezum.	2-17-08. E. W. Senior.
9-5-06. Robert N. Foster.	2-5-08. E. W. Senior.
9-5-06. Robert N. Foster.	3-12-08. H. R. Harriman.
10-16-06. R. S. Ryan.	1-7-08. Arthur D. Jones.
9-19-06. R. S. Ryan.	1-9-08. Clarence Cunningham (telegram)
11-3-06. Than Kelly.	1-15-08. Clarence Cunningham.
12-29-06. Than Kelly.	1-4-08. A. H. Wheatley.
12-31-06. Wendell McLaughlin.	12-23-08. R. A. Ballinger.
2-18-07. C. L. Willoughby.	5-13-09. Raymond Brown.
2-19-07. M. A. Green.	9-26-08. S. C. Chezum.
2-21-07. W. V. Rinehart.	4-19-09. Walter M. French.
2-23-07. Frank Watson.	4-2-09. H. R. Harriman.
2-25-07. E. J. Rathbone.	8-8-08. E. C. Mears.
2-25-07. E. J. Rathbone.	4-2-09. S. C. Morford.
3-29-07. Than Kelly.	3-31-09. Chas. F. Munday.
4-24-07. M. A. Green.	12-17-08. Chas. F. Munday.
5-11-07. Frank Watson.	8-9-09. F. C. Robertson.
5-16-07. Maurice D. Leehey.	12-5-08. F. C. Robertson.
5-21-07. John F. Reed.	10-6-08. Frank Watson.
5-28-07. E. W. Senior.	9-10-08. Frank Watson.
7-6-07. F. J. Hoagland.	4-23-08. M. A. Green.
6-18-07. Geo. W. Ross.	1-17-09. M. A. Green.
6-20-07. M. A. Green.	

List 3.

Letters dated and listed October 27, 1909:

5-28-07. 16 letters, E. W. Senior to register and receiver, United States land office, Juneau, Alaska, all under date of May 28, 1907, and all pinned together.
 4-24-08. Letter, Frank Watson to P. M. Mullin, Juneau, Alaska.
 10-26-07. Letter, Frank Watson to John W. Dudley, Juneau, Alaska.
 9-16-07. Letter, Than Kelly to John W. Dudley, Juneau, Alaska.

7-29-07. Letter, Than Kelly to John W. Dudley, Juneau, Alaska.
 7-19-07. Letter, Walter M. French to J. W. Dudley, register, United States land office, Juneau, Alaska.
 6-28-07. Letter, Emma Bergstrom to register and receiver, Juneau, Alaska.
 6-25-07. Letter, with additional letter attached, relinquishing rights, etc., C. G. Abere to land office, Juneau.
 2-17-08. Letter, E. W. Senior to register and receiver, United States land office Juneau, Alaska.
 2-5-08. Letter, E. W. Senior to register and receiver, United States land office, Juneau, Alaska.
 1-16-06. Letter, Frank Watson to P. M. Mullin, land office, Juneau, Alaska.
 11-6-07. Letter, A. H. Wheatley to P. M. Mullin, land office, Juneau, Alaska.
 7-3-09. Letter, F. C. Robertson to P. M. Mullin, land office, Juneau, Alaska.
 12-5-08. Letter, F. C. Robertson to P. M. Mullin, land office, Juneau, Alaska.
 7-19-07. Letter, P. M. Mullin to J. B. Munley, Frinter Bay, Alaska.
 2-12-06. Letter, P. M. Mullin to J. B. Munley, Spokane, Wash.
 10-6-08. Letter, Frank Watson to John W. Dudley, Juneau, Alaska.
 9-10-08. Letter, Frank Watson to P. M. Mullin, Juneau, Alaska.
 7-22-07. Letter, Frank Watson to P. M. Mullin, Juneau, Alaska.
 7-22-07. Telegram, Frank Watson to P. M. Mullen, Juneau, Alaska.
 6-18-07. Letter, Geo. W. Ross to John W. Dudley, Juneau, Alaska.
 7-6-07. Letter, F. J. Hoagland to John W. Dudley, Juneau, Alaska.
 5-21-07. Letter, John F. Reed to register and receiver, Juneau, Alaska.
 4-14-05. Letter, J. D. Meenach to C. W. Mullen, land office, Juneau, Alaska.
 11-24-05. Letter, M. S. Duffield to P. M. Mullen, Juneau, Alaska.
 3-29-07. Letter, Than Kelly to John W. Dudley, Juneau, Alaska.
 5-11-07. Letter, Frank Watson to P. M. Mullen, Juneau, Alaska.
 12-29-06. Letter, Than Kelly to U. S. land commissioner, Juneau.
 1-8-07. Letter, Than Kelly to U. S. recorder, Juneau, Alaska.
 11-3-06. Letter, Than Kelly to U. S. land commissioner, Juneau.
 10-16-06. Letter, R. S. Ryan to P. L. Mullen, Juneau, Alaska.
 9-19-06. Letter, R. S. Ryan to P. M. Mullen, Juneau, Alaska.
 9-5-06. Letter, Robert A. Foster to John W. Dudley, Juneau.
 9-5-06. Letter, Robert A. Foster to John W. Dudley, Juneau.
 9-5-06. Letter, Robert A. Foster to receiver, land office, Juneau.
 7-23-07. Letter, R. J. McChesney to Mr. Mullen, Juneau.
 7-5-07. Letter, John J. Folstad to P. M. Mullen, Juneau.
 2-23-07. Letter, Frank Watson to P. M. Mullen, Juneau, Alaska.
 2-25-07. Letter, Frank Watson to P. M. Mullen, Juneau, Alaska.
 2-27-07. Letter, Frank Watson to P. M. Mullen, Juneau, Alaska.
 3-5-07. Letter, Frank Watson to P. M. Mullen, Juneau, Alaska.
 3-5-07. Letter, Frank Watson to P. M. Mullen, Juneau, Alaska.
 3-6-07. Letter, Frank Watson to P. M. Mullen, Juneau, Alaska.
 Officials United States land office, Juneau, Alaska: Register, J. W. Dudley; receiver, P. M. Mullen.

1974.—*List of letters received by Special Agent A. R. Bowman from the Juneau, Alaska, land office, but not listed in his receipt.*

6-12-05. Letter, A. H. Stracey to P. M. Mullen, esq., Juneau, Alaska.
 7-11-05. Letter, Fred Lind to P. M. Mullen, receiver U. S. L. O.
 7-11-05. Letter, Torger A. Feed to P. M. Mullen, esq., Juneau, Alaska.
 7-13-05. Letter, Walfred Dahlgren to P. M. Mullen, esq., Juneau, Alaska.
 7-15-05. Letter, Torger A. Feed, Seattle, to P. M. Mullen, esq., Juneau, Alaska.
 8-15-05. Letter, Torger A. Feed to Mr. P. M. Mullen, receiver U. S. Land Office, Juneau, Alaska.
 11-1-05. Letter, C. Christopher to Jno. W. Dudley, esq., register U. S. Land Office.
 11-23-05. Letter J. W. Caldwell to Jno. W. Dudley, register; & P. M. Mullen, receiver, Juneau, Alaska.
 12-12-05. Letter, A. H. Stracey to register & receiver, U. S. Land Office, Juneau, Alaska.
 1-10-06. Letter, C. Christopher to Jno. W. Dudley, esq., register U. S. Land Office, Juneau, Alaska.

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6-15-07. Letter, E. J. Rathbone to P. M. Mullen, receiver U. S. Land Office, Juneau, Alaska.

12-26-08. Letter, M. A. Green to Jno. W. Dudley, register U. S. Land Office, Juneau, Alaska.

1-16-06. Letter, Frank Watson to P. M. Mullen, land office, Juneau, Alaska.

7-22-07. Letter, Frank Watson to P. M. Mullen, Juneau, Alaska.

7-22-07. Telegram, Frank Watson to P. M. Mullen, Juneau, Alaska.

1-8-07. Letter, Than Kelly to U. S. recorder, Juneau, Alaska.

9-5-06. Letter, Robert Foster to John W. Dudley, Juneau.

7-5-07. Letter, John J. Folstad to P. M. Mullen, Juneau.

2-25-07. Letter, Frank Watson to P. M. Mullen, Juneau, Alaska.

2-27-07. Letter, Frank Watson to P. M. Mullen, Juneau, Alaska.

3-5-07. Letter, Frank Watson to P. M. Mullen, Juneau, Alaska.

3-5-07. Letter, Frank Watson to P. M. Mullen, Juneau, Alaska.

3-6-07. Letter, Frank Watson to P. M. Mullen, Juneau, Alaska.

7-19-07. Letter, P. M. Mullen to J. B. Munley, Frinter Bay, Alaska.

2-12-06. Letter, P. M. Mullen to J. B. Munley, Frinter Bay, Alaska.

5-28-07. 15 letters, E. W. Senior to register & receiver, United States Land Office, Juneau, Alaska.

EXHIBIT B.

SEATTLE, WASHINGTON, *September 19, 1909.*

Mr. LOUIS R. GLAVIS,
Lincoln Hotel, Seattle, Washington.

SIR: Formal demand is hereby made upon you for certain papers, the character of which is at this time unknown to me, and which are, I understand, involved in the Alaska coal cases. You have heretofore declined to permit me to see said papers, and for that reason I am unable to enumerate them.

I have stated to you several times that I am willing to give you full receipt for all of the official records of this office when they are properly turned over to me, and I am ready and willing to give you such receipt for the papers that you now have in your room at the Lincoln Hotel, Seattle, Wash. If you will bring them to the office, you can dictate your receipt to either of the three stenographers or all of them, if you so desire. This also applies to a number of papers in what is known as the "Binger Hermann case," involving an indictment against former Commissioner of the General Land Office Binger Hermann, who is now in the State of Oregon, which indictment is pending in the District of Oregon.

You will please deliver all of the above papers to Special Agent Maguire, who will present this letter to you. If you do not desire to trust them with him, you can bring them to the office in person.

As you are no longer connected with the government service in any way these papers are being unlawfully retained by you. The fact of the matter is that they should have been left in this office, and they were taken from here through misrepresentation by yourself and without my knowledge or permission.

If the papers are not in this office by 9.30 a. m., September 20, 1909, the matter will be presented to the United States Attorney for proper action with a view to protecting the interests of the Government both civilly and criminally.

Very respectfully,

A. CHRISTENSEN, *Chief of Field Division*

EXHIBIT A.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Seattle, Wash., September 20, 1909.

L. LOUIS R. GLAVIS,
Lincoln Hotel, Seattle, Washington.

SIR: In the list of letters received by Special Agent Arthur R. Bowman from the land office at Juneau, Alaska, the following letters are missing:

1-31-08. Wendell McLaughlin.	8- 3-07. Thos. Payne.
1-24-07. Archie W. Shields.	9-26-07. Clarence Cunningham.
1- 8-07. A. N. Wheatley.	12-11-07. Clarence Cunningham.
1-23-07. W. S. Yearsley.	6- 3-08. James D. Finch.
1- 9-08. Clarence Cunningham.	3-10-08. Clarence Cunningham.
1-19-08. Clarence Cunningham.	5-23-08. Wm. Sulzer.
1- 3-08. Frank Watson.	4-13-08. Clarence Cunningham.
1-14-08. Clarence Cunningham.	3-12-08. H. R. Haftman.
1- 7-08. Arthur D. Jones.	1- 9-08. Clarence Cunningham.
1-15-08. Clarence Cunningham.	(telegram).
(telegram).	1- 4-08. A. N. Wheatley.
1-23-08. R. A. Ballinger.	4-19-09. Walter M. French.
1-23-08. M. A. Green.	1- 7-09. M. A. Green.

I respectfully request that you advise me, if possible, what disposition was made of them and where they can be found.

Very respectfully,

A. CHRISTENSEN,
Chief of Field Division.

[Telegram.]

WASHINGTON, D. C., Feb. 4, '10.

A. CHRISTENSEN,
Chief of Field Divn., Custom House, Portland.

Send letter Todd to Glavis, about May, nineteen eight, re criminal prosecution Alaska case.

DENNETT, Commr.

Transmits original of letter from U. S. Atty. Elmer E. Todd to L. R. Glavis, dated May 18, 1908, in Christopher group. A. C.]

SEATTLE, WASHINGTON, February 4, 1910.

COMMISSIONER GENERAL LAND OFFICE,
Washington, D. C.

SIR: Attached herewith is the original of the letter, dated May 18, 1908, from United States Attorney Elmer E. Todd to Louis R. Glavis, former Chief of Field Division, in reference to a criminal prosecution being instituted in what is known as the Christopher group of Alaska coal claims.

Very respectfully,

Chief of Field Division.

PORTLAND, OREGON, February 5, 1910.

Hon. H. H. SCHWARTZ,
Chief of Field Service, Washington, D. C.

SIR: Referring to my letter to you of February 3, 1910, with which I transmitted a number of letters written to the Juneau, Alaska, land office by several of the coal claimants and its correspondents, and in which I advised you of the loss of a number of letters, I have the honor to transmit herewith a copy of letter just received from J. B. Walker, who assumed duty as register of that office on January 21, 1910; also copy of the receipt furnished the Juneau office by Bowman.

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You will note that there is a discrepancy both in this list of letters and the list that I sent you. As I advised you in my letter of February 3, 1910, Special Agent Jas. M. Sheridan has an exact duplicate of the receipt furnished the Juneau office, and I would suggest that you call upon him for same, in order that you may be able to determine just what letters are missing; also call upon him for any letters he may have which he received from me out of said letters.

From a close check of the lists, I find that the following are in the Walker list, but are not in the list enclosed with my letter of February 3rd:

- 11- -05. J. H. Caldwell, 2 receipts of letters to R. & R., Juneau, by A. R. Bowman
- 1-10-06. C. Christopher.
- 1-16-06. Frank Watson.
- 6-15-07. E. J. Rathbone.
- 7-22-07. Frank Watson, telegram.
- " Frank Watson, letter.

4-19-09. M. A. Green.

And that the following are in the Bowman list, but not in the Walker list:

- 7-19-07. Walter M. French, telegram.
- 10-26-07. Frank Watson.
- 4-23-08. M. A. Green.

There is evidently an error in the letter from Green, dated January 17, 1910. No doubt both of these are intended for January 7.

Very respectfully,

Chief of Field Division.

DEPARTMENT OF THE INTERIOR,
UNITED STATES LAND OFFICE,
Juneau, Alaska, January 30th, 1910.

Mr. A. CHRISTENSEN,
Chief of Field Division, G. L. O.,
Portland, Oregon.

DEAR SIR: I inclose copy of receipt now in possession of the receiver of this office containing a list of letters given by the former register to Special Agent Bowman on August 6, 1909. It was not until some time after the said date that the receiver learned of the delivery of the letters and he is now somewhat anxious regarding their present location. Is it possible, if these letters have served their purpose, that they be returned to this office?

I shall enter upon the performance of the duties of register to-morrow.

Very respectfully,

C. B. WALKER,
Special Agent, G. L. O.

JUNEAU, ALASKA, Aug. 6, 1909.

I have this date received from the U. S. land office at this place the following letter addressed to the office on the following dates by the following persons:

- 4-20-05. George W. H. White.
- 4-14-05. J. D. Meenach.
- 6-3-05. A. H. Stracy.
- 6-1-05. Torger A. Feed.
- 6-4-05. Torger A. Feed.
- 6-12-05. A. H. Stracy.
- 6-12-05. A. H. Stracy.
- 6-19-05. Torger A. Feed.
- 7-3-05. W. V. Rinehart.
- 7-11-05. A. H. Stracy.
- 7-11-05. Torger A. Feed.
- 7-17-05. W. V. Rinehart.
- 8-1-05. W. V. Rinehart.
- 8-9-05. W. V. Rinehart.
- 8-8-05. M. A. Green.
- 8-31-05. W. V. Rinehart.
- 9-2-05. Torger A. Feed.
- 9-8-05. W. V. Rinehart.
- 9-14-05. Chas. Munday.

- 10-6-05. W. V. Rinehart.
- 10-27-05. C. Christopher.
- 10-30-05. S. C. Chezum.
- 11 - 05. J. H. Caldwell.
- 11-24-05. M. S. Duffield.
- 12-7-05. C. Christopher.
- 12-12-05. A. H. Stracy.
- 1-10-06. C. Christopher.
- 1-16-06. Frank Watson.
- 1-25-06. C. Christopher.
- 3-27-06. W. W. Baker.
- 5-15-06. John W. Hartline (two receipts for letters to the R. & R. Juneau, Alaska, by A. R. Bowman.)
- 8-2-07. W. V. Rinehart.
- 8-3-07. Thos. Payne.
- 8-24-07. Archie W. Shiels.
- 9-16-07. Than Kelly.

9-26-07. Clarence Cunningham.	6-25-07. O. G. Laberee, and R. J. Laberee.
10-26-07. Frank Watson.	6-28-07. Emma Bergstrom.
11-8-07. A. H. Wheatley.	7-19-07. Walter M. French.
12-11-07. Clarence Cunningham.	7-22-07. Frank Watson, telegram.
12-23-07. W. S. Yearsley.	7-22-07. Frank Watson.
6-3-08. James D. Finch.	7-23-07. R. J. McChesney.
5-9-08. Clarence Cunningham.	7-29-07. Than Kelly.
3-10-08. Clarence Cunningham.	12-26-08. M. A. Green.
3-19-08. Clarence Cunningham.	4-2-09. H. R. Harriman.
5-23-08. Wm. Sulzer.	8-8-08. E. C. Mears.
5-19-08. Freeman G. Palmer.	4-2-09. S. O. Morford.
5-22-08. George Simmonds.	3-31-09. Chas. F. Munday.
5-1-08. Philip McElhone.	12-17-08. Chas. F. Munday.
6-23-06. S. C. Chezum.	8-3-09. F. C. Robertson.
3-5-06. Robert A. Foster.	12-5-08. F. C. Robertson.
9-5-06. Robert A. Foster.	10-6-08. Frank Watson.
9-19-06. R. S. Ryan.	9-10-08. Frank Watson.
10-16-06. R. S. Ryan.	4-24-08. Frank Watson.
11-3-06. Than Kelly.	4-3-08. Frank Watson.
12-29-08. Than Kelly.	4-13-08. Clarence Cunningham.
12-31-06. Wendell McLaughlin.	10-30-07. G. T. Barrett.
2-18-07. O. L. Willoughby.	3-14-08. Clarence Cunningham.
2-19-07. M. A. Green.	2-17-08. E. W. Senior.
2-21-07. W. V. Rinehart.	2-5-08. E. W. Senior.
2-23-07. Frank Watson.	3-12-08. H. R. Harriman.
2-25-07. E. J. Rathbone.	1-7-08. Arthur D. Jones.
2-25-07. E. J. Rathbone.	1-8-08. Clarence Cunningham, telegram.
3-29-07. Than Kelly.	1-15-08. Clarence Cunningham.
4-24-07. M. A. Green.	1-4-08. A. H. Wheatley.
5-11-07. Frank Watson.	12-23-08. R. A. Ballinger.
5-16-07. Maurice D. Leehey.	5-13-08. Raymond Brown.
5-21-07. John F. Reed.	9-26-08. S. C. Chezum.
5-28-07. E. W. Senior.	4-19-09. Walter M. French.
7-6-07. F. J. Hoagland.	4-19-09. M. A. Green.
6-15-07. E. J. Rathbone.	1-7-09. M. A. Green.
6-18-07. Geo. W. Ross.	
6-20-07. M. A. Green.	

The foregoing letters were all received by me from the register and receiver of the United States land office, at Juneau, Alaska, on this 6th day of August, 1909.

ARTHUR R. BOWMAN,
Special Agent, G. L. O.

SEATTLE, WASHINGTON, February 8, 1910.

Mr. H. H. SCHWARTZ,
Chief of Field Service, Washington, D. C.

SIR: Referring to my telegram of even date in which I wired you as follows:

"Assistant custodian and self broke open box in grand jury room containing Glavis's personal effects. Found originals except Cunningham letter of January 15, 1908, and two carbons of all missing letters mentioned my letter to Glavis September 20, 1909, and other government property. Will report fully to you to-day. Suggest cross-examination of Glavis and Richardson be continued until report arrives."

I have the honor to report that I am in receipt of your several letters of February 1, 1910, in which you request to be furnished with certain records alleged to be in this office or the General Land Office, for the use of the joint committee. These letters were received by me in Portland yesterday and I arrived in Seattle this morning. I telephoned to Miss Shartell, the stenographer in the office, yesterday and requested her to carefully search the records of the office in an effort to locate the papers you desire, but some of them could not be located. I then determined to search the contents of several boxes in the grand jury room in the Federal Building in which Mr. Glavis has stored his personal effects. The assistant custodian, G. W. O'Neill, and myself broke open two boxes and two barrels bearing Glavis's name and in which were stored his personal effects. Among them I have found all of the Government property noted on the inclosed list, among which will be found a list of all of the letters which have been reported as missing. All of the original of said letters excepting the letter from Clarence Cunningham, dated January 15, 1908, were found and also two carbons

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of all of the letters. Miss Shartell informs me that she copied all of these letters for Mr. Glavis shortly before he was dismissed from the service. She does not recall how many carbons she made. You will note the copies contain her initials.

In connection with these letters, your attention is invited to my letter to you of February 3, 1910, in which I made full report to you concerning the loss of said letters. In addition to the letters set forth in my letter to Glavis, of September 20, 1909, there were also found the following:

A. H. Wheatley to P. M. Mullen—December 30, 1907.

Arthur D. Jones & Co. to P. M. Mullen—January 11, 1908.

Copy of letter from Fred Dennett to R. A. Ballinger—December 17, 1908.

These letters were not listed in the receipt given by Special Agent Bowman to the Juneau, Alaska, land office. Please understand that the letters mentioned herein are a portion of those received by Special Agent Bowman from the Juneau, Alaska, land office in August, 1909.

I am unable to inform you when any of these letters were placed in the box by Mr. Glavis. I am informed by United States Attorney Todd that Payson C. Richardson who is now on his way to Washington as a witness for the committee, informed him (Todd) before his (Richardson's) departure for Washington, that he assisted Glavis on Sunday, September 19, 1909, in copying a large number of papers which Glavis had in his room at the Lincoln Hotel. That they worked until about five o'clock Monday morning, and that Glavis then went to the office of the chief of field division and returned all of the originals to me. I recall distinctly when Mr. Glavis returned some original papers to me, a list of which I have heretofore furnished your office; but these letters were not among said list. Mr. Glavis, at that time, was accompanied by some gentleman, but I am unable to inform you whether it was Mr. Richardson or not. I am of the opinion that it was not. These original papers were turned over to Mr. Spaulding by Mr. Glavis with the request that they be copied, as he had dictated them to Spaulding on Saturday, September 18th. After Glavis had delivered them to Spaulding I asked him if he now had any of the Government property in his possession, and he told me that he had not; that he had delivered all of the records to me. He mentioned the fact that he had some personal effects in the grand jury room, and he was going to ask the custodian to permit him to leave them there for the time being. At that time he had a key to the grand jury room. The key was not turned over to the custodian until a few days after he was separated from the service. It may be that when he went to the grand jury room on Monday morning, September 20th, that he had these letters in his possession and that he deliberately concealed these government documents, knowing them to be such. That is something, however, that should be brought from him on cross-examination, or through a proper judicial inquiry.

The missing original letters and a copy thereof are inclosed herewith, including a copy of the letter from Clarence Cunningham, dated January 15, 1908.

Very respectfully,

Chief of Field Division

List of original letters and telegrams found by G. W. O'Neill, assistant custodian Federal Building, and A. Christensen, in a box belonging to L. R. Glavis, among his personal property, in room 405, Federal Building, Seattle, Wash., February 8, 1910 (original and two carbons).

Clarence Cunningham (two carbons only),
January 15, 1908.

Clarence Cunningham, May 9, 1908.

Clarence Cunningham, March 10, 1908.

Clarence Cunningham, March 19, 1908.

Clarence Cunningham, April 13, 1908.

Clarence Cunningham, March 14, 1908.

Wm. Sulzer, May 23, 1908.

A. H. Wheatley, January 4, 1907.

A. H. Wheatley, December 30, 1907.

F. Watson, April 3, 1908.

H. R. Harriman, March 12, 1908.

Arthur D. Jones, January 7, 1908.

Arthur D. Jones & Co., January 11, 1908.

Clarence Cunningham (telegram), January 8, 1908.

James D. Finch, June 3, 1908.

Clarence Cunningham, December 11, 1907.

W—S. Yearsley, December 23, 1907.

Clarence Cunningham, September 26, 1907.

Thos. Payne, August 3, 1907.

Wendell McLaughlin, December 31, 1906.

M. A. Green, January 7, 1909.

M. A. Green, April 23, 1909.

Walter M. French, April 19, 1909.

R. A. Ballinger, December 23, 1908.

Fred Dennett, December 17, 1908.

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list of papers, letters, books, affidavits, and other government property found by G. W. O'Neal, asst. custodian Federal Building, and A. Christensen, in a barrel belonging to L. R. Glavis, among his personal belongings, in room 405, Federal Building, Seattle, Wash., February 8, 1910.

SEATTLE, WASHINGTON, Feb. 8, 1910.

- No. 1. Aff'd of J. Casey, dated Oct. 19, 1904, by L. R. Glavis.
- No. 2. Aff'd of L. Stoneman, dated Oct. 18, 1904, by L. R. Glavis.
- No. 3. Aff'd of F. S. Langley, dated Oct. 18, 1904, by L. R. Glavis.
- No. 4. Aff'd of Peter Pierson, dated Oct. 14, 1904, by L. R. Glavis.
- No. 5. Aff'd of Chas. Harris, dated Oct. 19, 1904, by L. R. Glavis.
- No. 6. Aff'd of Peter Pierson, dated Oct. 15, 1904, by L. R. Glavis.
- No. 7. Aff'd of Chas. Harris, dated Oct. 19, 1904, by L. R. Glavis.
- No. 8. Aff'd of B. O. Brown, dated Oct. 9, 1904, by L. R. Glavis.
- No. 9. Aff'd of Adam Peabody, dated Oct. 11, 1904, by L. R. Glavis.
- No. 10. Aff'd of H. Naughton, dated Oct. 18, 1904, by L. R. Glavis.
- No. 11. Aff'd of Joe Foster, dated Oct. 17, 1904, by L. R. Glavis.
- No. 12. Aff'd of M. W. Caldwell, dated Oct. 16, 1904, by L. R. Glavis.
- No. 13. Aff'd of W. D. Hill, dated Oct. 14, 1904, by L. R. Glavis.
- No. 14. Aff'd of John Derr, dated Oct. 13, 1904, by L. R. Glavis.
- No. 15. Envelope and papers, marked "Leroy Tucker-171-awaiting exam. King-
a, Idaho, July 29/04, made field exam."
- No. 16. Envelope and papers, marked Frank Allen, "Procure Herman Vogle and
in Dobbins affidavits," George Piatt.
- No. 17. (Personal. Returned.)
- No. 18. Envelope addressed to L. R. Glavis, C. F. D., 310 custom house, Portland,
e. No enclosures.
- No. 19. Rand McNally map of Washington.
- No. 20. (Personal. Returned.)
- No. 21. Field notes, G. L. O., 4-671.
- No. 22. (Personal.)

*list of letters, papers, books, and other government property found by G. W. O'Neal
and A. Christensen in a box belonging to L. R. Glavis, among his personal property,
in Room 405, Federal Building, Seattle, Wash., February 8, 1910.*

- Roll of legal cap paper, on one sheet of which are notes made in reference to certain
bins.
- July Field Program, 1909, Forestry Service.
- Copy of The Use Book, 1908, Forestry Service.
- Stubs of T. R. Book No. 2721 (L. R. Glavis).
- Stubs of T. R. Book No. 307 (L. R. Glavis).
- Copy of "U. S. Geological Survey 9-918," containing notes on Alaska and other
pics.
- Copy of circular entitled "Rules and regulations for the sale of timber upon the
reserved public lands in the District of Alaska," on the margin of which are written
ne notes.
- Sheet of paper containing rough draft of letter and other written notes.
- Sheet of paper on which are written words and figures.
- Two typewritten sheets containing questions to inspectors.
- Carbon copy of five sheets typewritten paper containing questions for registers,
eivers, and clerks.
- One Western Union book of blank forms.
- One copy Form 4-620, upon the back of which are written certain notes.
- One envelope, on which are written notes.
- One copy "Northern Navigation Co.'s Lines" time table.
- Two blank copies Form 6-142.
- One 6-page circular letter dated Oct. 8, 1907, on the margin of which notes are
itten.
- Three blank copies of Form 4-509.
- One manila envelope, containing copy of letter from P. O. inspector, dated October
1908.
- Letter from Louis H. Arneson to Glavis dated March 5, 1909.
- Book of Western Union blanks.
- Copy of letter from E. B. Linnen to Com'r, dated Feb. 16, 1906.

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Three copies of typewritten questions to be submitted to registers, receivers, and clerks.

Twenty blank forms 4-509.

Two blank forms 8-142.

Six blank forms 4-159.

Six blank relinquishments.

Copy of Field Notes with entries by Glavis.

One blank form 4-585.

Two receipt books partly used.

Three blank forms 8-142.

Eight blank propositions of settlement.

One Forest Reserve Manual.

One "Manual of Surveying Instructions," etc.

One "Congressional Directory" for December, 1906.

One "Circular from the General Land Office," 1904 ed.

One "Congressional Directory" for December, 1906.

One "Compilation of Public Timber Laws," 1903 ed.

One unused No. 9 envelope addressed to Com'r.

Four blank No. 6 envelopes.

Four blank No. 9 envelopes.

One Rand, McNally & Co.'s map of Alaska.

Rough map of Tp. 26 N. of R. 2 W.

Rough map of Tp. 35 N. of R. 7 E.

Rough map of Tp. 34 N. of R. 5 E.

Rough map of Tp. 34 N. of R. 7 E.

Rough map of Tp. 15 N. of R. 3 E.

Six sheets of notes on legal cap paper.

"Daily Record," etc., of L. R. Glavis from July 22, 1906, to and including June 4, 1909.

Notes on case Simpson Lumber Co., names of parties involved, two sheets of paper. Blank Form 4-681.

Circular, "Methods now employed in filing and indexing records in the U. S. Surveyor-General's office, Portland, Ore.

Page torn from note book, notes re Frank Bramwell.

Notes on deed of D. L. Steele to his wife, Lydia A. Steel.

Two sheets, Form 4-590, with notes on back of same.

Notes (3 sheets) on warranty deeds, re Simpson Lumber Co.

Notes, miscellaneous, one sheet.

Aff'd. William Turpin, re Simpson Lumber case, by Stephen Norton, special agent, G. L. O., dated June 18, 1908.

Aff'd. J. A. Stemmerman, re Simpson Lumber Co. case, by Stephen Norton, special agent, G. L. O., dated June 22, 1908.

Notes, one small sheet, miscellaneous.

One yellow filing card.

Four sheets, notes on desert land entries.

Personal letter Pollard to Glavis, dated July 22, —.

Three blank forms (0-2—"B.")

Receipt from Portland Omnibus Co. to L. R. Glavis.

Envelope, 3 enclosures, to Mr. J. H. Lutz, C/O Imperial Hotel, Portland, Oregon, returned to writer "C. O. P."

Voucher No. 125, favor William J. Dunn, by L. R. Glavis.

Notes re money paid various people (2 sheets).

Notes re money paid various people for hearings.

Carbon copy monthly work sheet Field Div. No. One, Sept. 08.

Receipt of Pac. Tel. Co. to L. R. Glavis (\$1.00), 3-21-08.

Form 4-665e, to John E. Harper, Narrows, Ore. (\$10.50.)

Letter, Pollard to Glavis, re payment of vouchers.

List of cash receipts (6 sheets), dated 4-20-08.

Form 4-665e, J. Clark Freeman, Burns, Ore. (\$10.50.)

Sight draft, Citizens' National Bank, Baker City, Horace Tillard Jones to L. R. Glavis.

Copies of telegrams Glavis to Bowman and Glavis to clerk dated June 5, 08, and found in No. 9 envelope.

Four sheets blank legal cap paper.

Six blank No. 9 envelopes.

List of names and addresses inclosed in blue envelope on which is written "Carpractors of Seattle, Washington."

Blueprint township 6 north of range 19 east.

Blueprint township 6b north of range 14 east.
 Blueprint township 5 north of range 18 east.
 Blueprint township 6 north of range 17 east.
 Blueprint township 3 north of range 19 east.
 Blueprint township 6 north of range 18 east.
 Blueprint township 4 north of range 19 east.
 Blueprint township 5 north of range 19 east.
 Blueprint township 6 north of range 19 east.
 Blueprint township 12 north of range 5 east.
 Blueprint township 13 north of range 6 east.
 Blueprint township 14 north of range 6 east.
 Blueprint township 12 north of range 6 east.
 Blueprint township 14 north of range 5 east.
 Blueprint township 13 north of range 5 east.
 One "I-P Loose Leaf Price Book" empty.
 One "I-P Loose Leaf Price Book" containing carbon copies of Glavis's daily reports from Jan. 1, 1909, to June 30, 1909, inc.
 Envelope addressed to Charles O. Pollard, Special Agent.
 Signed voucher of James T. Adams account of hearing in U. S. vs. Lester W. Shaver.
 Signed voucher of John Q. Adams account of hearing in U. S. vs. Lester W. Shaver.
 Signed voucher of Perry Maupin account of hearings in U. S. vs. Lester W. Shaver.
 Envelope addressed to Charles C. Pollard.

SEATTLE, WASHINGTON, February 8, 1910.

Mr. H. H. SCHWARTZ,
Chief of Field Service, Washington, D. C.

SIR: I am in receipt of your above letter of February 1, 1910, in which you advised that the joint committee has requested the following:

"Telegram of L. R. Glavis to commissioner April 11, 1909, and reply of commissioner to Glavis April 13, 1909. Also original letter of Commissioner Dennett to Glavis June 3, 1908, advising him of the passage of the new coal land law, and directing him to continue his investigations and submit reports in accordance therewith."

The clerk of this office has carefully searched all of the records, but has been unable to find either of the telegrams mentioned above or the original letter. There is no record whatever of their having been received or having been in the office. I am, therefore, unable to forward you the same.

In this connection I desire to invite your attention to the fact that Mr. Glavis has, from time to time, since his separation from the service, been returning to me official records belonging to the Seattle and also the Portland division. I also invite your attention to my report to you of even date, in which I advise you that I found a large number of documents belonging to the Government among his personal effects in the grand jury room in the Federal Building, which he apparently was deliberately concealing and depriving the Government of the use thereof. I would therefore suggest that you call on Mr. Glavis, through a subpoena or otherwise, for the original letter. I have no doubt that if all of his personal effects can be searched that said original letter can be found.

Very respectfully,

Chief of Field Division.

SEATTLE, WASHINGTON, February 8, 1910.

Mr. H. H. SCHWARTZ,
Chief of Field Service, Washington, D. C.

SIR: I am in receipt of your above letter of February 1, 1910, in which you state that the joint committee has asked for the following:

"Original report of H. T. Jones to L. R. Glavis, dated December 2, 1907, now or formerly in General Land Office."

In reply I have to advise you that I have searched carefully in all of the records of this office, but have been unable to find either the original or copy of said report. Mr. Jones informs me that he did not retain a copy of it.

Your attention is invited to the attached list of letters and telegrams, which is a list of papers that were unlawfully taken from the office by former Chief of Field Division L. R. Glavis on the evening of September 18, 1909, to his room in the Lincoln

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Hotel, Seattle, Washington. They were taken there by him for the purpose of dictating a receipt to Clerk Frank L. Spaulding. He did dictate the receipt, but it was not written by Mr. Spaulding as dictated by him. On Sunday, September 19, 1909 I wrote him a letter demanding that all office records at that time in his possession be immediately returned to me. In accordance with said request the papers noted on the attached list were returned to me about nine a. m., September 20, 1909. You will note that said list contains the original letter which you desire. All of the papers mentioned in this list were delivered to Special Agent J. M. Sheridan immediately upon his arrival at Seattle, Washington, and I assume he now has said letter in his possession. I would therefore suggest that you call upon Mr. Sheridan for the same. At the time I handed these papers to Mr. Sheridan I suggested that he take therefrom all the papers that he might be able to use in connection with the investigation of the Cunningham group of Alaska coal claims.

Very respectfully,

Chief of Field Division.

SEATTLE, WASHINGTON, February 8, 1910.

Mr. H. H. SCHWARTZ,
Chief of Field Service, Washington, D. C.

SIR: I am in receipt of your above letter of February 1, 1910, in which you advise that the joint committee desires the following:

"Letter from Mr. Todd, U. S. attorney at Seattle, Washington, about May, 1909 relating to the proposed criminal prosecution of certain Alaskan coal claims, which letter should now be on file either in the General Land Office or in the Seattle land office, and all other papers in either of said files bearing upon the same matter."

In accordance therewith, I transmit herewith original report of Special Agent Horace T. Jones, dated April 22, 1908, to E. E. Todd, United States attorney; original letter from Glavis to Jones, dated April 24, 1908; original of letter from Todd to Jones of May 13, 1908; also copy of letter from Todd to Glavis, dated May 18, 1908, and of which you have already been furnished with the original, and copy with my letter to you of February 4th and 5th, 1910, and copy of original letter from Jones to Todd, dated May 14, 1908. There is also attached herewith an original letter, dated June 8, 1908, addressed to the Commissioner of the General Land Office, evidently from Chief of Field Division Glavis, but unsigned, and a copy of said letter. I am informed by Special Agent Jones that this letter was never sent to the commissioner by Mr. Glavis as he spoke of taking the matter up personally with the commissioner when he was in Washington. I am unable to find a carbon copy of this report, except the one attached thereto, which is a copy which was apparently written some time later. I am informed by Miss Shartell, the stenographer now in this office, that this copy was made by Mrs. Greer, who was in this office until some time in August, 1909. You will note that the copies bear the initials "GG." United States attorney Todd informs me that all of the papers in connection with the proposed criminal prosecution were returned to Mr. Glavis with his letter of May 18, 1909, including carbon copy of his letter of May 13 1909.

These are all of the papers in the Christopher group relating to the proposed criminal prosecution.

Very respectfully,

Chief of Field Division.

SEATTLE, WASHINGTON, February 9, 1910.

Mr. H. H. SCHWARTZ,
Chief of Field Service, Washington, D. C.

SIR: In connection with my report to you of yesterday relative to finding of the missing twenty-one letters which has been the subject of a very thorough investigation, I transmit herewith affidavits of Garrett W. O'Neill and myself and Miss Shartell, accounting, so far as we know, for the whereabouts of these letters from the time they were copied by Miss Shartell until they were discovered by Mr. O'Neill and myself among the personal effects of Mr. Glavis in the grand jury room in the Federal Building, February 8, 1910. Your attention is invited to the affidavit of Miss Shartell, in which it is shown that she was directed to make copies of these letters after Glavis had returned from the East in connection with his report to the President and prior to his dismissal. He therefore has had copies of these letters all of the time. Miss Shartell does not recall how many copies she made. Your attention is also invited to the fact

that Mr. Glavis had possession of a key to the grand jury room for several days after his dismissal and these letters could have very easily been placed in the box by him either on Monday, September 20, 1909, or any day thereafter while he had the key.

I interviewed Miss E. Jewell Watkins last evening and endeavored to secure a statement from her as to whether or not she worked for Glavis during all night of September 19th, but she declined to make any statement whatever concerning the work she had performed for Glavis, contending that she bore the same relation to Mr. Glavis as an attorney to his client. She admitted, however, that she did copy a great many papers for Mr. Glavis, and she did not deny that she did not work most of one night in making copies of papers for him. Your attention is also invited to a letter from United States Attorney Todd and to my letters of recent date advising you that P. C. Richardson told Mr. Todd that he engaged a stenographer for Glavis, and that they worked all night making copies of a number of records.

I have reported to you from time to time of the result of the investigation concerning the missing letters, and have also stated to you that it is my opinion that Mr. Glavis knew at all times of the whereabouts of these letters and that he was responsible for the loss. I have shown that he has willfully stolen or secreted the letters and deprived the Government of the use thereof. The finding of these letters among his personal effects yesterday has confirmed all of my contentions and it seems that it is now time that action is taken by the Government toward punishing the parties responsible for the Government having been deprived of the use of these letters. I have shown to you in my different reports wherein on many occasions Glavis deliberately misrepresented the facts to me and also to your office with reference to the records of the office. I think all of these matters should be borne in mind during the re-examination of Glavis and others in connection with the investigation that is now being made by the joint committee of Congress.

Very respectfully,

Chief of Field Division.

[Telegram.]

WASHINGTON, D. C., February 10, 1910.

ANDREW CHRISTENSEN,
Chief Field Service, Custom-House, Portland, Oreg.:

If hopsa [your] report does not contain hopsa [your] affidavit and that of pacal ucdetiam [assistant custodian] as to circumstances of vamtamh [finding], records and semdomdc [contents] of pez [box], have such affidavits sent at once. Use extreme care that no emofenons [one learns] of vamtamh [finding].

SCHWARTZ, Chief.

[Telegram.]

WASHINGTON, D. C., February 10, 1910.

ANDREW CHRISTENSEN,
Chief Field Service, Custom-House, Portland, Oreg.:

If your report does not contain your affidavit and that of assistant custodian as to circumstances of finding records and contents of box, have such affidavits sent at once. Use extreme care that no one learns finding.

SCHWARTZ, Chief.

[Telegram.]

PORTLAND, OREGON, February 10, 1910.

SCHWARTZ,
General Land Office, Washington, D. C.:

Dabcid pacal sucdetiam stenographer Cyildorr and hiba filesir with bacti yesterday.
CHRISTENSEN, Chief.

[Telegram.]

PORTLAND, OREGON, February 10, 1910.

SCHWARTZ,
General Land Office, Washington, D. C.:

Affidavit assistant custodian, Stenographer Shartell, and myself forwarded with report yesterday.

CHRISTENSEN, Chief.

[Telegram.]

WASHINGTON, D. C., Feb. 18, 10
(Via Portland, Ore., Feb. 18, 10.

Special Agent CHRISTENSEN,
G. L. O., Federal Bldg., Seattle, Wn.:

Glavis alleges to have taken affidavit Harry White in matter of Green group in Los Angeles, June or July, 1909. If said affidavit is on file in your office forward immediately. Wire answer.

UNDERWOOD, Asst. Chief

[Telegram.]

SEATTLE, WASHINGTON.
February 18, 1910.

H. H. SCHWARTZ,
Chief of Field Service, Washington, D. C.:

Am bringing affidavit of Harry White before Glavis with me. Leave in morning.
CHRISTENSEN.

FEBRUARY 24, 1910.

Mr. H. H. SCHWARTZ,
Chief of Field Service, Washington, D. C.

SIR: In accordance with your telegram of the 18th inst., I transmit herewith original and one copy of the affidavit made by Harry White, one of the Alaska coal claimants, before L. R. Glavis, dated Seattle, Washington, July 10, 1909. Your attention is invited to the fact that this affidavit was made in Seattle and not in Los Angeles as stated in your telegram.

Very respectfully,

Chief of Field Division

FEBRUARY 24, 1910.

Mr. H. H. SCHWARTZ,
Chief of Field Service, Washington, D. C.

SIR: In accordance with your telegram of January 31, 1910, in which you advised that the joint committee desired all communications from Clarence Cunningham to the register and receiver of the Juneau, Alaska, land office, and copies of all communications from the Juneau office to Clarence Cunningham, etc., I have the honor to transmit herewith the following, which have been furnished me by C. B. Walker, register of the Juneau office:

Affidavit of Miles C. Moore, dated April 10, 1907 (original); affidavit of W. H. Warner, dated Apr. 18, 1907 (original); affidavit of W. W. Baker, dated Apr. 29, 1907 (original); affidavit of Frederick Burbidge, May 1, 1907 (original); affidavit of Reginald K. Neill, May 2, 1907 (original); affidavit of Joseph H. Neill, Jan. 10, 1907 (original).

Copy of letter from John W. Dudley, register of Juneau, Alaska, land office, to Chas Sweeney, February 16, 1906.

Copy of letter, R. & R., Juneau, to A. D. Jones, February 19, 1906; copy of letter, R. & R., Juneau, to H. W. Collins, February 19, 1906; copy of letter, R. & R., Juneau, to John Hartline, March 7, 1906; copy of letter, R. & R., Juneau, to H. K. Love, March 3, 1906, inclosing 29 copies, application for patent, all involved in Cunningham; copy of letter, R. & R., Juneau, to A. W. Rochford, March 7, 1906; copy of letter, R. & R., Juneau, to A. W. Rochford, March 9, 1906; copy of letter, R. & R., Juneau, to Chas. S. Hubbel, Nov. 16, 1906.

Original report from Special Agent Love to the R. & R., Juneau, dated August 1 1907, relative to the Cunningham group.

Original letter from Love to R. & R., Juneau, relative to "Octopus" coal claim, dated March 20, 1907.

Original letter from Love to R. & R., Juneau, Alaska, dated January 8, 1908, quoting telegram from commissioner, directing him to forward copies of plats of survey of Alaska coal entries 1 to 33.

Letter from R. & R., Juneau, Alaska, to Clarence Cunningham, rejecting filing of coal claim, the "Maxine," U. S. Coal Land Survey No. 46, to which is attached

memorandum by the R. & R., at Juneau, stating that similar letters, verbatim, except as to name, amount, and survey number, were sent on same date to the other Cunningham claimants at their various addresses.

Copy of letter from Dudley to Cunningham, April 19, 1907; copy of letter from Dudley to Cunningham, July 27, 1907; copy of letter from Dudley to S. C. Chezum, July 27, 1907; copy of letter from Dudley to W. W. Baker, November 22, 1907; copy of letter from Dudley to W. W. Baker, December 12, 1907.

Copy of telegram of May 11, 1909, from R. & R., Juneau, to Glavis, at Saratoga Hotel, Chicago, furnishing the following names: George M. Seward, L. F. Seward, Frank R. Thompson, C. E. Thompson, Miller, Oakley, Strickland, Cook, Wandke, Harpin, Drum, Moore, Kilman, Moe, Griffin, Des Jardines, Geraghty, Gail, Frost, Fitzgerald, Horrocks, McCabe, Merrillies, Vivian.

Copy of telegram from R. & R., Juneau, dated November 24, 1909, to James M. Meridan.

Very respectfully,

Chief of Field Division.

FEBRUARY 24, 1910.

Mr. H. H. SCHWARTZ,
Chief of Field Service, Washington, D. C.

Sir: In accordance with your telegram of January 31, 1910, I transmit herewith the following communications which were transmitted to me by C. R. Walker, register of the U. S. land office, Juneau, Alaska, by his letter of February 8, 1910:

Favorable report by Special Agent Love, dated January 17, 1907, addressed to the R. & R. as to the following claims: Albion, Soccoro, Ansonia, Lucky Baldwin, Tenino, Autocrat, Newgate, Frick, Lobster, Wabash, Lyons.

Telegram from Clarence Cunningham to Dudley, dated January 19, 1907, on back of which is the reply without date.

Telegram from Clarence Cunningham to Dudley, dated December 17, 1906, on back of which is the reply, dated December 17, 1906.

Telegram from Clarence Cunningham to P. M. Mullen, dated December 13, 1906, on back of which is the reply, dated December 13, 1906.

Telegram from Clarence Cunningham to Dudley, dated Mar. 2, 1906.

Letter from R. & R., Juneau, to Fred C. Davidson, May 20, 1908 (copy); letter from R. & R., Juneau, to Michael Doneen, May 20, 1908 (copy); letter from R. & R., Juneau, to G. R. Cunningham, April 10, 1906 (copy); letter from Michael Doneen to R. & R., dated May 8, 1908; letter from B. C. Riblet to R. & R., dated Jan. 11, 1908; letter from W. E. Miller to R. & R., dated Jan. 11, 1908; letter from John A. Finch to R. & R., dated Jan. 13, 1908; letter from W. H. Warner to R. & R., dated October 25, 1907; letter from W. W. Baker to R. & R., dated November 29, 1907.

Very respectfully,

Chief of Field Division.

Mr. VERTREES. Mr. Christensen, we had gotten to the point where you had stated that, in response to the demands of your chief, Mr. Schwartz, for certain particular named papers, which you have named, you were searching the office at Seattle?

Mr. CHRISTENSEN. Yes, sir.

Mr. VERTREES. Now, did you find these particular papers in the office that you were then searching for?

Mr. CHRISTENSEN. I received, as I stated before, these three letters of the 7th in Portland, and I telegraphed or telephoned the office to Miss Shartell, in Seattle, and told her to search for those papers, and that I was coming up that night, and when I arrived there on the morning of the 8th she was still searching for those and the letter that I just mentioned.

Mr. VERTREES. Well, what next?

Mr. CHRISTENSEN. While I was in the office Mr. Parks came in and told me about his search about a week prior to that for the Bowman

notebooks or other records, and he told me then of Glavis having a box of personal effects upstairs in the grand jury room, and stated that he had not made a thorough search and did not like to do it. It was then suggested that further search be made, and I went to see—

Mr. VERTREES. Wait a moment. Up to that time did you know that Mr. Glavis had this box in the building anywhere?

Mr. CHRISTENSEN. No, sir; I did not know at that time. I recall, however, that on Monday, September 20, when Glavis was in the office, I think, he stated that he was then going upstairs to look over some personal effects. I asked him whether there were any official records up there, and he said there were not.

Mr. VERTREES. Had you been up there at all yourself about those boxes in any way?

Mr. CHRISTENSEN. No, sir.

Mr. VERTREES. Had you ever seen them?

Mr. CHRISTENSEN. No, sir.

Mr. VERTREES. As the result of your conversation with Mr. Parks, to which you have just referred, you stated that you were also to search those boxes yourself?

Mr. CHRISTENSEN. Yes, sir.

Mr. VERTREES. State now to the committee what you did.

Mr. CHRISTENSEN. I then went to Mr. O'Neill and told him that I wanted to go up in the grand jury room and look around. I told him I was looking for some records that had been called for by the committee. He then got his key and went up with me, and we first went to one room, the grand jury room, and he told me that there was no box in there that belonged to our office, but I looked around, anyway, to assure myself of it, and then he took me to another room and we found there two boxes belonging to Mr. Glavis—one, I understand, containing a music box, and another one. We pried the board loose to ascertain its contents and found that it contained records for the music box. I also looked around in that room to see whether there were any boxes belonging to the office, but none were found.

Then we went to the next room, a third room, and there Mr. O'Neill showed me that box—showed me the box and two barrels—two boxes and two barrels belonging to Mr. Glavis, and he showed me the box that he and Parks had partly opened that day, and I went to the box, and I think I pushed the board that was loose—just pushed it off to one side—and the other board, which was partly fastened. I took hold of at one end and pushed it up or lifted it up, and Mr. O'Neill pulled it off the other end and set it away, and then I saw that there was some sleeping bag there, or whatever it was, and a tent. Everything looked pretty dirty and I stepped back and took my coat off and also rolled up my sleeves, because it looked like it would be a pretty dusty job; everything was very dusty in the room, as it was in the other room, and O'Neill proceeded then to lift it up. I think he took out the sleeping bag and the tent and some of the books, and I went up to the other end of the box and lifted out a book or two; I do not know how many. I think I also lifted out a mirror that was in the box, and after that I saw what appeared to be printed matter and lifted it up and glanced through it very quickly, to see very quickly what they were, and exclaimed, "here are some letters that we have been looking for or investigating for some time."

Mr. VERTREES. What were those papers?

Mr. CHRISTENSEN. Those were the 24 missing letters, and there were two carbon copies of the originals.

The CHAIRMAN. The box you refer to is the box out here in this second room here?

Mr. CHRISTENSEN. Yes, sir.

Mr. VERTREES. I wish to ask you—I do not remember how it was—there were any carbon copies there of the letter of January 15?

Mr. CHRISTENSEN. Yes, sir. There were two carbons of all the letters. I think there were 25 letters altogether—that is, copies. There were only 24 originals.

Mr. VERTREES. As I understand you, the 24 originals were there with their copies?

Mr. CHRISTENSEN. Yes, sir.

Mr. VERTREES. And also the carbon copy of that twenty-fifth letter, or the copy of that letter of January 15, 1908, from Clarence Cunningham, which original he had delivered to you on the morning of the 20th of September; is that correct?

Mr. CHRISTENSEN. That is correct.

Mr. VERTREES. Were all those carbons initialed; that is, bearing the initial of Miss Shartell?

Mr. CHRISTENSEN. I do not get that question.

Mr. VERTREES. Were Miss Shartell's initials on all those carbon copies that you found in that box?

Mr. CHRISTENSEN. Yes, sir; I discovered that after I got to the office; after I was dictating my report for Mr. Schwartz. I happened to notice that they were copied by her and bore her initials.

Mr. VERTREES. Something has been said by some of the witnesses about some books and dictionaries. Do you recall that there were some dictionaries, one or more volumes of large books, in there?

Mr. CHRISTENSEN. Yes, sir; there were two volumes of dictionaries, and two or three volumes of a wide book—a big book—some edition books.

Mr. VERTREES. Where did you find those letters and carbons that we are now speaking of, with reference to the books or dictionaries?

Mr. CHRISTENSEN. They were under those books; I do not know whether they were immediately under those wide books or not. I know that I had taken up one of those wide books, and I might have moved some of the other books. There were some circulars—not regulars—but a book called a circular of the General Land Office.

Mr. VERTREES. It is a book, is it?

Mr. CHRISTENSEN. Yes, sir; about that thick [indicating].

Mr. VERTREES. Were there any papers in that box other than those you have mentioned?

Mr. CHRISTENSEN. Yes, sir.

Mr. VERTREES. Were they on the top or on the bottom?

Mr. CHRISTENSEN. They were under these wide books.

Mr. VERTREES. Those papers were on top—these old papers?

Mr. CHRISTENSEN. Yes, sir.

Mr. VERTREES. How many were there of those other papers in there?

Mr. CHRISTENSEN. There were quite a number of them; I do not know how many of them there were, though. The papers really did not amount to anything.

Mr. VERTREES. Had you any knowledge, previous to that time, of those original letters, or of those carbons—I mean had you ever seen them or touched them before that time?

Mr. CHRISTENSEN. I had not.

Mr. VERTREES. Had you any knowledge or information where they were previous to that?

Mr. CHRISTENSEN. No, sir; except such as I had learned from the investigation. I assumed all the time that they were in the possession of Cox, of the Forestry Bureau.

Mr. VERTREES. I mean any knowledge that they were in that building concealed anywhere?

Mr. CHRISTENSEN. No, sir; I had not.

Mr. VERTREES. What did you do with them after you got them?

Mr. CHRISTENSEN. Mr. O'Neill took them from my hands, and after we got through searching the box and barrels we went downstairs and Mr. O'Neill made a list of them, and after he had made a list of them I took them to Miss Shartell and told her to make a list of them, and I then started to prepare a telegram to Mr. Schwartz of the finding of them, and I happened to think that I had not checked them up with the original letters, with the list we had, and I took them from her and checked them up, and she went to lunch then and came back in the afternoon and made a list of them.

Mr. VERTREES. Then what did you do with them?

Mr. CHRISTENSEN. I inclosed them with my report, the original and one carbon, and retained the other carbon and sent them on to Mr. Schwartz.

Mr. VERTREES. Mr. Schwartz, your chief?

Mr. CHRISTENSEN. Yes, sir.

Mr. VERTREES. What day was it that you made this discovery?

Mr. CHRISTENSEN. February 8, 1910.

Mr. VERTREES. About what time in the day?

Mr. CHRISTENSEN. Oh, it was some time between 10 and 12 o'clock.

Mr. VERTREES. Now, as I have understood you, you were not looking for those papers at that time at all?

Mr. CHRISTENSEN. No, sir.

Mr. VERTREES. But you were searching for other papers which this committee had called for?

Mr. CHRISTENSEN. Yes, sir.

Mr. VERTREES. Passing now to another question, Mr. Christensen, on page 2424 there is printed a letter dated Portland, Oreg., June 8, 1908, to the Commissioner of the General Land Office, Washington, which was intended to be sent by Mr. Glavis. It was found and referred to in the testimony of Mr. Todd. I will ask you to examine that sufficiently to acquaint yourself with its contents, and state whether or not that letter, the original, I mean, was found by you in the Seattle office after you took charge?

Mr. CHRISTENSEN. Yes, sir; it was.

The CHAIRMAN. What letter is that?

Mr. VERTREES. It is the letter on page 2424 of the record. Do you remember how long after you had taken charge it was that you found that letter?

Mr. CHRISTENSEN. I think it was sometime during the month of January. I was looking through this group to which this letter relates with a view to presenting it to the grand jury for criminal prosecution. I ran across it at that time.

The CHAIRMAN. Was that letter signed?

Mr. CHRISTENSEN. No, sir.

The CHAIRMAN. Was it typewritten?

Mr. CHRISTENSEN. Yes, sir; but I was going to say that I assumed it was the original. There were copies of it. It looked like the original and a copy.

Mr. VERTREES. Did you make your report in writing after your discovery?

Mr. CHRISTENSEN. I did.

Mr. VERTREES. That report has already been filed with the committee. It was filed when we asked for a subpoena for Mr. Christensen.

The CHAIRMAN. Yes; but it has not been admitted in evidence.

Mr. VERTREES. I would like to ask that it be admitted in evidence.

The CHAIRMAN. If there is no objection it is admitted.

Mr. VERTREES. It is with the clerk of the committee now.

Mr. CHRISTENSEN. There is a copy of it here.

The CHAIRMAN. It is admitted.

Mr. VERTREES. You may examine Mr. Christensen.

Mr. BRANDEIS. Mr. Christensen, when you telegraphed to Mr. Schwartz on February 8 about the finding of these papers, you made, did you not, false statements?

Mr. CHRISTENSEN. I did not.

Mr. BRANDEIS. Are you positive you did not?

Mr. CHRISTENSEN. I certainly am. The only statement that I did make there that is not correct is breaking open the box. The box was open, but we did break open several boxes and the telegram was prepared in a hurry and we simply overlooked that.

Mr. BRANDEIS. I thought you said you were very careful before you sent that telegram to check up those papers?

Mr. CHRISTENSEN. I did.

Mr. BRANDEIS. Do you mean to say that it was accidental that you falsely stated that you had broken open that box?

Mr. CHRISTENSEN. It was a very easy matter to say, but it was not false, anyway.

Mr. BRANDEIS. It is very easy to lie, but did you not mean to convey the erroneous impression—

Senator SUTHERLAND. I think that is altogether improper.

Mr. VERTREES. I wish here to interpose an objection to the very unseemly and improper way in which not only the examination of this witness is conducted, but in which the examinations have been habitually conducted. I think the witnesses ought either to be protected or allowed to protect themselves, one or the other, for a more unseemly, reprehensible, and improper course I do not think any gentleman of this committee has ever seen than has been pursued throughout this investigation.

Senator SUTHERLAND. I think that question had better be stricken from the record. It is offensive, not only offensive to the witness, but to the committee.

Mr. BRANDEIS. Very well; I will put it in another form. Did you mean to convey to Mr. Schwartz, and through Mr. Schwartz to the counsel and to the committee, impression contrary to the fact?

Mr. CHRISTENSEN. I did not. There were several barrels—two barrels were broken open. We found some official records in one of

them, and it is not an entirely incorrect statement. It is correct so far as breaking open the barrels is concerned, and also the other boxes.

Mr. BRANDEIS. Then you do want to stand by it now that you did break open this box?

Mr. CHRISTENSEN. I did not break open this particular box where those letters were found because it was already open.

Mr. BRANDIES (reading):

Assistant custodian and self broke open box in grand jury room containing Glavis's personal effects. Found originals except Cunningham letter of January 15, 1908, and two carbons of all missing letters; mentioned my letter to Glavis September 20, 1909.

You say, "broke open box."

Mr. CHRISTENSEN. Let me see that.

Mr. BRANDEIS. I beg your pardon.

Mr. CHRISTENSEN. I think you will find it says boxes down in the letter.

Senator SUTHERLAND. Mr. Chairman, I submit that the witness has a right to look at a paper from which counsel is reading, if he desires to do so.

Senator PURCELL. On cross-examination?

Senator SUTHERLAND. On cross-examination.

Mr. BRANDEIS. I do not believe, Senator Sutherland, that he has that right until I ask him something in regard to it.

Senator SUTHERLAND. I think he has. Counsel reads from a written paper that the witness has himself written, and the witness has a right to look at it.

Senator PURCELL. If he wants to prove the contents of the paper by him then he has the right to show it to him and ask him about it.

Senator SUTHERLAND. He thinks he is not reading it correctly.

Mr. BRANDEIS. If I am not reading it correctly, and any member of the committee believes it, I shall be very glad to have them do it, but I think in the cross-examination of this witness he ought to be subject to cross-examination, where his veracity is in question.

Senator SUTHERLAND. I think under the circumstances of this case the witness makes a very proper request to be permitted to look at the paper.

Senator PURCELL. He has already testified to a certain state of facts concerning this transaction. Now, the other side have a right to cross-examine him on that and to use any writing that he made himself that pertains to that matter. Now, if he is proving the contents of the paper, it is proper to show it to him when he is cross-examining him upon it. It is an important matter. Mr. Glavis went over this whole thing and he was permitted to cross-examine him fully on the other side.

Senator FLETCHER. The witness was proceeding to answer the question all right.

Senator SUTHERLAND. The witness requested to look at the paper.

Senator FLETCHER. But he did it, and he had gone on with his answer.

Senator SUTHERLAND. I think that if you will refer to the record you will find that you are mistaken. I think you will find that counsel declined to show it to him.

Senator PURCELL. Counsel is asking him about a matter that he has already been over.

Senator SUTHERLAND. I know what the counsel is doing quite as well as the Senator from North Dakota.

Senator PURCELL. That is true, and I think I know just as much as you know about it. If you want it that way, I will hand it back to you.

Senator SUTHERLAND. I do not want to dictate to the Senator. I assumed that he knew, and I think he ought to assume that I knew as well.

Senator PURCELL. I think I do.

The CHAIRMAN. Let us proceed with the examination.

Senator FLETCHER. Mr. Christensen, were you not proceeding to answer the question?

Mr. CHRISTENSEN. Yes, sir.

The CHAIRMAN. The gentlemen are unfortunate. They have not Mr. Graham here to keep them straight.

Senator FLETCHER. Mr. Christensen, had you finished your answer?

Mr. CHRISTENSEN. I think you will find in the letter there that I say boxes. It was not my intention to mislead in any way. It is probably a mistake if it went in that way. It was prepared in the code, and it is rather difficult to prepare a telegram when you prepare it in code.

Mr. BRANDEIS. You afterwards confirmed that code telegram by letter, and in the letter you have transcribed it into ordinary English?

Mr. CHRISTENSEN. I set forth an exact copy of the telegram in the letter.

Mr. BRANDEIS. Well, I will ask you to look at that telegram and state to the committee whether it is a fact that you referred to breaking open a box and not several boxes?

Mr. CHRISTENSEN. Yes; it so states in the telegram, but that is a mistake, of course.

Mr. BRANDEIS. Now, what other mistakes are there in that telegram; do you recall the others?

Mr. CHRISTENSEN. The fact that they were not found in the grand-jury room.

Mr. BRANDEIS. That is the second mistake.

Mr. CHRISTENSEN. They were found in the storeroom. I can account for that very easily, because when Mr. Parks came and told me about it he talked of the grand jury room entirely, but did not say anything about the storeroom, and when we went into the different rooms I did not notice what room we were in; I never noticed the sign on the door and I did not know. That was not called to my attention until some time afterwards.

Mr. BRANDEIS. Did you hear Mr. O'Neill's testimony on Saturday last?

Mr. CHRISTENSEN. I think I did, most of it.

Mr. BRANDEIS. Did you hear him describe that storeroom in which traps and all sorts of things were around and in which this box was put?

Mr. CHRISTENSEN. There were also tables and chairs—just the same kind of furniture as there was in the grand jury room.

Mr. BRANDEIS. Do you wish this committee to understand that you could not tell the difference between the grand jury room and this room in which the articles were?

Mr. CHRISTENSEN. It was just simply an oversight. I spoke of the grand jury room instead of the storeroom.

Mr. BRANDEIS. Have you not been in the grand jury room many times?

Mr. CHRISTENSEN. I have not; it was the first time I was ever on the fourth floor when I went up there with Mr. O'Neill on that day.

Mr. BRANDEIS. Were you present any time during the Cunningham trials?

Mr. CHRISTENSEN. I was. I was in Seattle several times.

Mr. BRANDEIS. Where were they held?

Mr. CHRISTENSEN. They were held, I think, on the third floor—I think in the circuit court room.

Mr. BRANDEIS. None of them were held in the grand jury room?

Mr. CHRISTENSEN. No, sir; not to my knowledge.

Mr. BRANDEIS. So this, you say, was a mistake, an innocent mistake?

Mr. CHRISTENSEN. It certainly was. I spoke of that after I had made the report.

Mr. BRANDEIS. Now, what other errors are there in this brief telegram?

Mr. CHRISTENSEN. I do not think there are any others.

Mr. BRANDEIS. Will you look at this telegram and state?

Mr. CHRISTENSEN. I do not see anything there.

Mr. BRANDEIS. It is not true, is it, that you found in that box all the missing letters mentioned in your letter to Glavis of September 20?

Mr. CHRISTENSEN. Except of January 15.

Mr. BRANDEIS. Except of January 15, 1908, which is here stated. That is not true, is it?

Mr. CHRISTENSEN. That is right. There were two letters there—two letters that were returned before.

Mr. BRANDEIS. That is not true either, is it? Did you not tell this committee a few moments ago that you checked off the letters that you found there against the September 20 letter?

Mr. CHRISTENSEN. Yes, sir; I did not stop to say what I found. I found there three letters, as you will note from the report, that are not set forth in that letter. I will read the report. The report sets forth what I found.

Mr. BRANDEIS. You did not find what you stated in that telegram, did you?

Mr. CHRISTENSEN. I found them all except those two letters that had been returned.

Mr. BRANDEIS. You state that you found all except the January 15, 1908, letter; but you told this committee that you checked off these letters against that letter of September 20.

Mr. CHRISTENSEN. Yes; but I did not go on and explain what discrepancy there was.

Mr. BRANDEIS. Why did you not; you had all the opportunity?

Mr. CHRISTENSEN. I overlooked it, I suppose.

Mr. BRANDEIS. Now, as a matter of fact you did find up here by extraordinary coincidence just 24 letters. Is that what you want the committee to understand, but did not happen to be just the 24 that were lost?

Mr. CHRISTENSEN. No, sir; I explained that in my report and—

Mr. BRANDEIS. How did you—

The CHAIRMAN. Just let him answer the question.

Mr. BRANDEIS. I beg your pardon, sir, if I have interrupted you.

Mr. CHRISTENSEN. I do not know where we were.

Mr. BRANDEIS. How do you explain this extraordinary coincidence that there were 24 letters lost and 24 letters found, but the two of those letters that were found did not happen to be the two that were lost?

Mr. CHRISTENSEN. I can not explain that. Those three letters that were found there were not set forth in the Bowman receipt and we had no record whatever of those three letters and they happened to be in there—those that Glavis had copied.

Mr. BRANDEIS. There were only those two. There were quite a lot of other letters that you did not have a Bowman receipt for—

Mr. CHRISTENSEN. Yes.

Mr. BRANDEIS. But what I want from you, if you can give it, is an explanation of this extraordinary coincidence.

Mr. CHRISTENSEN. I think—

Mr. BRANDEIS. Just wait until I finish my question—that while 24 letters were missing, and were the subject of your letter to Glavis of the 20th, and just 24 letters were found, that they did not happen to be the same?

Mr. CHRISTENSEN. Now, if you will read that report that will explain all of it, I think.

Mr. BRANDEIS. Can you not explain it to us, if it is a fact?

Mr. CHRISTENSEN. Yes, sir; I attempted to explain it.

Mr. BRANDEIS. If it is a fact, explain this coincidence.

Mr. CHRISTENSEN. It just happened that there were 24 letters that were found. I can not explain that, and Mr. Glavis had 25 letters copied by Miss Shartell and the twenty-fourth was returned some time by him, or taken away by him and the other 24 letters were left there, and when the checking was done by Mr. Maguire it seems that he overlooked 2 letters, either that, or the 2 letters that were subsequently found or returned by someone. I do not know how they came back.

Mr. BRANDEIS. We hear about long arms of coincidence, but how does it happen? Have you any suggestion as to how it happens that there were just 24 there and not 26 or 28 or 30?

Mr. CHRISTENSEN. I have no idea as to how it happened.

Mr. BRANDEIS. There were other letters that have been lost that you know of that are missing now—these Bowman letters—are there not?

Mr. CHRISTENSEN. No, sir; I think they have all been found.

Mr. BRANDEIS. Everything has been found, has it? When?

Mr. CHRISTENSEN. There were some discrepancies in the report of February 3.

Mr. BRANDEIS. There were some other letters?

Mr. CHRISTENSEN. But they are not lost; I do not think they are. They can probably be accounted for by mistake in date.

Mr. BRANDEIS. Well, let us see. Letter of S. E. Chezum of June 20, 1906. That is the Bowman receipt.

Mr. CHRISTENSEN. Yes, sir.

Mr. BRANDEIS. You did not find that?

Mr. CHRISTENSEN. Well, I think that was accounted for in my report of February 5. That is—

Mr. BRANDEIS. A. H. Stracey—

Senator FLINT. I do not know that the witness has finished his answer. Is there anything further that you want to state?

Mr. VERTREES. Look at your report if you want to.

Mr. BRANDEIS. I do not think he ought to look at that report.

Mr. VERTREES. I think he should when the witness says that the report accounts for a certain thing that no man can carry in his mind.

Senator SUTHERLAND. There is no doubt, Mr. Vertrees, but what the witness has the right to look at the report. It will refresh his memory and enable him to answer the question.

Mr. BRANDEIS. I think there is a very great doubt, Mr. Senator, whether the witness has a right to refresh his memory until the time comes for refreshing it. I believe I have the right to exhaust his recollection.

Senator SUTHERLAND. No witness can be compelled to answer a question if he does not know, and if it is necessary for him to refresh his memory by looking at a paper he may do so. You can ask him for his best recollection outside of it, of course.

Mr. BRANDEIS. That is just what I am asking him, and if he says he does not know, then he will have to get along as well as he can until he is shown his report, as to what he stated before.

Senator PURCELL. I think when it comes to dates and proper names he is entitled to see it because nobody can remember dates and proper names. I think the rule changes there. You are asking him now about proper names.

Mr. BRANDEIS. I am asking him now—

Senator PURCELL. I did not get that first name.

Mr. BRANDEIS. S. E. Chezum. There are a number of letters missing, are there not?

Mr. CHRISTENSEN. I do not recall now. In my report of February 5, after Mr. Walker, the register of the Juneau office had sent me a copy of the Bowman receipt—I think that I was able to account for them. I am not sure about that.

Mr. BRANDEIS. You were able to account for all of them?

Mr. CHRISTENSEN. I am not sure. It seems to me I was.

Mr. BRANDEIS. Now look at your report of February—what date?

Mr. CHRISTENSEN. February 5, 1910. I said:

You will note that there is a discrepancy, both in this list of letters and the list that I sent you. As I advised you in my letter of February 3, 1910, Special Agent James M. Sheridan has an exact duplicate of the receipt furnished the Juneau office, and I would suggest that you call upon him for same, in order that you may be able to determine just what letters are missing; also call upon him for any letters he may have which he received from me out of said letters.

From a close check of the list, I find that the following are in the Walker list, but are not in the list inclosed with my letter of February 3.

And then I set forth—

J. H. Caldwell; two receipts of letters to R. and R., Juneau, by A. R. Bowman; C. Christopher, Frank Watson, E. J. Rathbone; Frank Watson, telegram, and Frank Watson, letter; 4-19-09, M. A. Green.

And that the following are in the Bowman list, but not in the Walker list:

7-19-07, Walter M. French, telegram.

10-26-07, Frank Watson.

4-23-08, M. A. Green.

There is evidently an error in the letter from Green dated January 17, 1910. No doubt both of these are intended for January 7.

Mr. BRANDEIS. That does not account for all of these letters, does it?

Mr. CHRISTENSEN. I do not recall now whether it does or not.

Mr. BRANDEIS. How many original letters did you say you found?

Mr. CHRISTENSEN. There were 24, I think.

Mr. BRANDEIS. Is it a matter about which you think, or is it a matter about which you know?

Mr. CHRISTENSEN. I think the twenty-fourth letter was simply a copy from Mr. Dennett to Mr. Ballinger. It was not an original, but a copy, and that copy I do not think was made in the office in Seattle, although I am not sure. It does not look like it.

Mr. BRANDEIS. Then it is not 24 you say now, do you?

Mr. CHRISTENSEN. Well, it depends upon whether you call that an original.

Mr. BRANDEIS. Well, that is the receipt which you gave Mr. Glavis for the papers on November 5—papers which he delivered to you with his letter of November 5.

Mr. CHRISTENSEN. I do not think he was given any receipt.

Mr. BRANDEIS. You did not give him any receipt at all?

Mr. CHRISTENSEN. No, sir; I do not think so. There was a list made of them. I might have transmitted a list of the papers returned with my letter of November 5.

Mr. BRANDEIS. Why did you not give him a list?

Mr. CHRISTENSEN. He did not ask for it, and I supposed it was just overlooked.

Mr. BRANDEIS. In this letter of February 8 you state:

I am unable to inform you when any of these letters were placed in the box by Mr. Glavis.

How do you know that Mr. Glavis placed these in the box?

Mr. CHRISTENSEN. I do not know; I just assume that.

Mr. BRANDEIS. Why did you assume it?

Mr. CHRISTENSEN. Because they were among his personal effects, and I do not know of anyone else having been there. It was simply an assumption.

Mr. BRANDEIS. When did you first learn that Mr. Glavis had nothing to do with the packing of that box?

Mr. CHRISTENSEN. That was not until after we had been subpoenaed, I think; Mr. Kennedy came in and told us of it.

Mr. BRANDEIS. That was the first information you had that the things were put into that box by Andrew Kennedy?

Mr. CHRISTENSEN. I think that was the first time I had any information on that subject.

Mr. BRANDEIS. Did you not inquire about that of Mr. O'Neill?

Mr. CHRISTENSEN. I do not know whether that was brought up that day or not; I could not say positively.

Mr. BRANDEIS. Do you mean to say that you did not make any inquiry of Mr. O'Neill before you sent that telegram as to how these articles had gotten into the box?

Mr. CHRISTENSEN. We probably talked it over, but I am not sure whether we talked about that or not.

Mr. BRANDEIS. Did not Mr. O'Neill tell you what he told this committee the time that Mr. Glavis left, and he said that all of those articles lay around that room, scattered around—boxes and papers and rugs and anything—and that they were put into that box by Andrew Kennedy in order to move them over to the other place?

Mr. CHRISTENSEN. I am not sure. I think that conversation was brought up after Mr. Kennedy came back. That was after we had been subpoenaed and the matter had been reported in the papers.

Mr. BRANDEIS. You mean after Mr. Kennedy came back from testifying here?

Mr. CHRISTENSEN. No; after he arrived in Seattle. He came up after he was subpoenaed and after the matter had been reported in the newspapers, and the day that we packed the box; that was when it was.

Mr. BRANDEIS. But Mr. Kennedy told you before he came on to testify the facts that he told the committee, did he not?

Mr. CHRISTENSEN. Yes, sir.

Mr. BRANDEIS. Did you communicate those facts to Mr. Schwartz?

Mr. CHRISTENSEN. No, sir; because Mr. Kennedy and I were subpoenaed, or I was subpoenaed, at the time Mr. Kennedy was talking to me, and I was coming on, and I did not write any further to Mr. Schwartz.

Mr. BRANDEIS. Did you tell Mr. Kennedy, or tell this committee before Mr. Kennedy testified, that it was a mistake when you said that you had broken open this box?

Mr. CHRISTENSEN. I do not know that I get your question.

Mr. BRANDEIS. I asked you whether you told Mr. Schwartz at any time that it was a mistake when you telegraphed to him that you had broken open Glavis's box?

Mr. CHRISTENSEN. Well, it is not really a mistake. The box was broken open, but I should have said "boxes."

Mr. BRANDEIS. But the box in which these letters are alleged to have been found was not broken open, and that is the only box that you telegraphed about, is it not?

Mr. CHRISTENSEN. Well, I did not mention any box.

Mr. BRANDEIS. Well, let us see.

Senator FLINT. Mr. Brandeis, I would suggest that he has gone into that matter already. You have his statement of it, and the committee has your view of it. He says he referred to boxes, and the telegram says box. Now, what more could be done if you went over it twenty times?

Mr. BRANDEIS. I do not know. I think if the committee has the same view of the witness that I have, I do not know that it is important; but it seems to me that his attitude is of very great importance in dealing with this subject. However, I am quite ready to stop the examination now. I would like to look over these papers, which I have not had an opportunity to do, and I will examine them between now and to-morrow and see whether there is anything further that it seems necessary to me to bring out.

Senator FLINT. I do not want to stop you. I only make this one suggestion.

Mr. BRANDEIS. I think I had better stop here, because I can not finish anyhow until I have examined the papers which have been put in evidence. I prefer to do that.

Mr. VERTREES. If the examination is to be postponed on that account, I will only ask that when it is resumed in the morning counsel be confined to those papers.

Mr. BRANDEIS. By no means.

Mr. VERTREES. I do not want it to be stretched out. If he has anything to ask the witness, let him ask it now. We have a half an hour to go on yet, and if he has anything else he wants to ask about he can ask it now.

Mr. BRANDEIS. I shall assume the right to examine him in any respect that I see fit. I think these papers have very improperly been denied me, and I should not be limited in any way if I choose to examine him further.

Senator FLINT. I think Mr. Brandeis should have the privilege of cross-examination on any proper lines.

Mr. VERTREES. It is simply a matter of time. If there are any other questions to be asked otherwise than with respect to these papers he can ask them now.

Senator FLINT. I should think you could go on, Mr. Brandeis. There was nothing in my suggestion that prevented your going on now.

Mr. BRANDEIS. It is not that, Senator. I would be unable anyhow to finish with him, because I shall want to carefully go over these papers before I do finish, and I do not know that there is much more that I want to ask, but there may be, and as these papers are papers which I have asked for more than a week ago and which were denied to me, I suppose there can be no objection to that course.

Senator FLINT. It seems to me that so much has been placed in the record to-day that Mr. Brandeis ought to have an opportunity to look it over. I know I would want to do it if I were cross-examining the witness.

The CHAIRMAN. Can we not have another witness and let this go over for cross-examination to-morrow?

Mr. VERTREES. Yes, sir.

(Mr. Christensen was thereupon temporarily excused.)

Mr. VERTREES. I have no objection to going on with the witness that I shall produce now, but it is a distinct change of the subject. I will go on with him now, but I would not like to have him interrupted in the morning in order to go back to this other matter. I would like to get through with Mr. Brooks. We can get through with him in half an hour or forty minutes. The only reason I am pressing this matter is because the committee holds but two sessions a week, and time is very valuable to us all—to the committee and everyone else.

The CHAIRMAN. You may go ahead with Mr. Brooks and we will get along the best way we can. If counsel will help us we can expedite this matter. If counsel would show a disposition not to take up quite so much time and hurry along it would greatly expedite matters. Of course, I have no right to speak for anybody else, as the counsel knows.

Mr. VERTREES. As we break in, I believe it would be of advantage to us if I should say that this gentleman will be introduced on an altogether different line.

The CHAIRMAN. We can not help that, Mr. Vertrees.

Mr. VERTREES. I was going to state what it is. I thought my statement would aid the committee in seeing the value of his testimony, and it was only this, that it is with the view to showing the real facts with reference to coal conditions in Alaska, and the situation that Mr. Ballinger knew confronted him at the time he came into office. So much has been said here and elsewhere about what is in Alaska, that I wish this committee to know from an authoritative source just what the facts are.

TESTIMONY OF ALFRED H. BROOKS.

Alfred H. Brooks, having been first duly sworn by the chairman, testified as follows:

Mr. VERTREES. This, I believe, is Mr. Alfred H. Brooks?

Mr. BROOKS. Yes, sir.

Mr. VERTREES. Mr. Brooks, what is your position, if any, in the government service?

Mr. BROOKS. I am in the Geological Survey. My designation is geologist in charge of the division of Alaska mineral resources.

Mr. VERTREES. How long have you been in the service of the Geological Survey?

Mr. BROOKS. Since 1894.

Mr. VERTREES. Previous to that were you in the service of the Government?

Mr. BROOKS. Well, I was employed temporarily in the summer since 1888, I think.

Mr. VERTREES. But now your position is that of geologist in charge of Alaska mineral resources?

Mr. BROOKS. Yes, sir; the division of Alaska mineral resources.

Mr. VERTREES. And you have been in that position how long?

Mr. BROOKS. Since 1903, I think; it was 1902 or 1903, I can not be sure exactly.

Mr. VERTREES. Have you visited Alaska professionally?

Mr. BROOKS. Yes, sir.

Mr. VERTREES. How many times?

Mr. BROOKS. Twelve times.

Mr. VERTREES. Are you familiar with the conditions there?

Mr. BROOKS. I have traveled in Alaska a great deal, and I have studied the situation in connection with my official work.

Mr. VERTREES. There is a map to your right, hanging on the wall, which I have had brought up from your office for the purpose of examining you with reference to it, and also another map to the right there which I have had brought up—the one behind Senator Sutherland—that we may have some idea of the relative extent of Alaska. To begin with, I will ask you to state what is the area of Alaska in square miles.

Mr. BROOKS. Five hundred and eighty-six thousand four hundred square miles.

Mr. VERTREES. Taking different States now, by way of comparison. For instance, take the State of Kentucky, how does it compare with the State of Kentucky in area?

Mr. BROOKS. As I recall it is about—I can not remember Kentucky.

Mr. VERTREES. Kentucky is a little over 40,000 square miles.

Mr. BROOKS. Well, it is 40,000 divided into 586,400.

Mr. VERTREES. Something like 17 times.

Mr. BROOKS. Yes, sir; 17 times. It is about 6 times the size of all the New England States; I think it is about 70 times as large as Massachusetts.

The CHAIRMAN. How many square miles do you say it has?

Mr. BROOKS. Five hundred and eighty-six thousand four hundred square miles.

Mr. VERTREES. Assuming Florida is something like 58,000 square miles, how many times larger is it than Florida?

Mr. BROOKS. It is about seventeen times.

Mr. VERTREES. Do you say you have visited it some twelve times for the purpose of studying its mineral conditions?

Mr. BROOKS. Yes, sir; I have been in Alaska twelve times for periods of from three to six months at a time.

Mr. VERTREES. Now, with reference to the coal-bearing areas of Alaska, Mr. Brooks, about what is their extent so far as known?

Mr. BROOKS. The area of coal-bearing formations, so far as we now know them, include about 12,000 square miles. I might modify that to say that only about one-tenth of that area do we actually know to be underlaid by coal seams. The other nine-tenths we have not sufficient information about to make a definite statement that the coal is present.

Mr. VERTREES. Then what do you mean when you say you think there is about 12,000 square miles of coal-bearing rocks or areas?

Mr. BROOKS. We identified certain formations as being coal bearing and we know in a general way what the distribution of these formations is, but we do not know that the formation everywhere carries commercial coal beds.

Mr. VERTREES. Now, by commercial coal beds you mean those that have a salable value or workable value?

Mr. BROOKS. Those that can be mined under present conditions.

Mr. VERTREES. Profitably?

Mr. BROOKS. Yes, sir.

Mr. VERTREES. About how much of Alaska is of that character; that is, of the known coal fields, what proportion?

Mr. BROOKS. There is about one-tenth of the total area which we have good reason to believe—one-tenth of the total area of coal-bearing rocks.

Mr. VERTREES. When you come to the coal which you know, classify that. I believe there are about three kinds.

Mr. BROOKS. There are three general classes: The lignite, which has the lowest value; the subbituminous, which stands above the lignite; and the high-grade bituminous and anthracite, forming three groups.

Mr. VERTREES. How much of the known coal is of the inferior quality that you call lignite?

Mr. BROOKS. About one-half of it; that is, one-half of the known area, of course.

The CHAIRMAN. Professor, how much is the total coal-bearing area of Alaska?

Mr. BROOKS. The total area of coal-bearing rocks, so far as we know, is some 12,000 square miles, but there is about one-fifth of the territory which we have not surveyed at all, and we know that there is more coal in that area.

The CHAIRMAN. We can not help that, Mr. Vertrees.

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Mr. BROOKS. Well, I was employed temporarily in the summer since 1888, I think.

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Mr. BROOKS. Yes, sir; the division of Alaska mineral resources.

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Mr. BROOKS. Since 1903, I think; it was 1902 or 1903, I can not be sure exactly.

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The CHAIRMAN. Professor, how much is the total coal-bearing area of Alaska?

Mr. BROOKS. The total area of coal-bearing rocks, so far as we know, is some 12,000 square miles, but there is about one-fifth of the Territory which we have not surveyed at all, and we know that there is more coal in that area.

Mr. VERTREES. Speaking with reference to the map, and describing it from that map as you sit, about where are the coal-bearing areas that are known?

Mr. BROOKS. We have coal in southwestern Alaska, in this long peninsula running out there, which is bituminous and subbituminous. We have on Cook Inlet, the long indentation there—

Mr. VERTREES. That is in the lower or southern central part?

Mr. BROOKS. Yes, sir. We have very extensive areas of lignite.

The CHAIRMAN. Are they on the west side or on the Kenai Peninsula?

Mr. BROOKS. They occur chiefly on the Kenai Peninsula, on the east side of Cook Inlet, but there is also coal on the west side of Cook Inlet, so the probabilities are there is a great deal of lignite in that part of Alaska. Northeast of Cook Inlet in Central Alaska is the Matanuska coal field, which is one of the areas which carries high-grade bituminous coal and some anthracite.

The CHAIRMAN. How extensive is that area of the Matanuska?

Mr. BROOKS. The known area of Matanuska includes about 40 or 50 square miles underlain by coal.

The CHAIRMAN. Is it all in the Matanuska Valley or outside?

Mr. BROOKS. All the high-grade coal we know about is in the Matanuska Valley, and in the Susitna Valley, to the west. There are extensive coal areas which appear to be chiefly lignite.

Mr. VERTREES. Lignite, as I understand you, is the most inferior grade of coal?

Mr. BROOKS. Of course we have lignite. It varies from a thing that is little more than wood up to something that grades into a bituminous coal. There is no sharp distinction in what we call lignite—what I had in mind, from the lignite fields of Alaska. They carry higher grades and also lower grades of lignite.

Mr. VERTREES. What are the other coal fields of Alaska?

Mr. BROOKS. We have the Matanuska that I have spoken of. To the east of that is the field lying north of Controller Bay, called the Bering River field, which includes about 40 or possibly 50 square miles, so far as we know it.

Mr. VERTREES. Is not that sometimes called the Katalla field?

Mr. BROOKS. Yes, sir; it is also known as Katalla, from the town of Katalla.

Mr. VERTREES. There is about how much of that?

Mr. BROOKS. The known area is between 40 and 50 square miles.

Mr. VERTREES. Now, where would you say this next field is?

Mr. BROOKS. To the west of Matanuska is the Copper River, coming in from central Alaska. There is little lignite, because in the Copper River basin that seems to be of no great extent.

The CHAIRMAN. That is east of Matanuska?

Mr. BROOKS. That is east of Matanuska, yes, sir—the other fields lying in the interior of Alaska for the most part. We have very extensive lignite deposits in the southern part of Tanana Valley, 30 or 40 miles south of Fairbanks. There is a large area of lignite-bearing rocks in that field, which is undeveloped, of course.

The CHAIRMAN. Is there not some lignite on the Yukon above the mouth of the Tanana?

Mr. BROOKS. Yes, sir; there is lignite from Rampart—above Rampart—and it also occurs on the upper river near the international boundary.

The CHAIRMAN. Near Eagle?

Mr. BROOKS. Yes, sir; and above Eagle, and we also have on the lower Yukon, near the Koyukuk and near the town of Nulato, some coals which run up into the subbituminous.

The CHAIRMAN. Is there any coal up on the Koyukuk, up from the mouth?

Mr. BROOKS. There is some lignite on the Koyukuk; not very much.

Senator FLETCHER. Where is that one-fifth area that you have not examined?

Mr. BROOKS. That is chiefly contained in the extreme northern part of the Territory, which lies north of the Yukon Basin. It is chiefly north of the Arctic Circle, but it also includes some of those high ranges that you see along directly back from the coast; that is, we have surveyed the borders of the ranges, but we have not been back among the high ranges. We have in northern Alaska good bituminous coal—at the extreme northwestern part of Alaska, near Cape Lisbon. There is a good bituminous coal there, and quite a good deal of it. There is also some subbituminous coal that occurs in very large quantities. There is coal on the Colville River, which is the central river on the map running due north, and there is coal reported both east and west of that river, which indicates that we have in northern Alaska probably the most extensive coal fields of the Territory, but these are practically not included in the estimate of 12,000 square miles, because that is the area which we have not done very much work in.

The CHAIRMAN. The Colville River runs north into the Arctic, does it not?

Mr. BROOKS. It runs almost due north and strikes about the central part of the northern arctic coast of Alaska.

Mr. VERTREES. Now, so far as this situation, this status, is concerned, does the coal of Alaska—any of the grades lie in the horizontal beds, or as a rule is it broken?

Mr. BROOKS. The high-grade coal practically all occurs in closely folded rocks.

Mr. VERTREES. Explain to the committee what you mean by closely folded.

Mr. BROOKS. It perhaps can be illustrated. If you have the original deposits of the coal there, horizontal like that, then there have been deformations or movements of the earth crust and things have been folded up, and in most of the Alaska coal fields, where we find the high-grade coal, that deformation has occurred so far as to deform the beds, and also to break them up. That is particularly true of the Bering River coal fields, or the Katalla coal fields, where the rocks are exceedingly intricately folded. It is true also, perhaps, to a less extent in the Matanuska field, but they are also intricately folded. There are a great many of the lignite beds here horizontal and little disturbed, but here also we get some breaks to different faultings and folding.

Mr. VERTREES. Then, as I understand you, almost without exception, certainly in the Matanuska and Katalla fields, folding is very extreme?

Mr. BROOKS. Yes, sir.

Mr. VERTREES. What is the depth of the coal strata there?

Mr. BROOKS. It varies greatly up to 90 degrees. It may stand up vertically. The folding is so extreme that it stands up vertically, or it may very often overturn and be the reverse of what its normal position would be.

Mr. VERTREES. Does it turn the other way?

Mr. BROOKS. If you had the coal bed lying horizontal, this would be the first period of the folding, and then it would be closed up like that, and then if the folding went on it might be reversed, so that those beds dip in this way, and actually were continued around. They were overturned.

Mr. VERTREES. Is that extreme folding and dipping characteristic of these higher-grade fields?

Mr. BROOKS. It certainly is of the Bering River or Katalla fields, and I think it is true to a certain extent of the Matanuska field, but we do not know the Matanuska field so well.

Mr. VERTREES. What is the practical effect of that condition that you mention upon mining?

Mr. BROOKS. It increases the cost of mining very materially.

Mr. VERTREES. In what way?

Mr. BROOKS. In driving in on a coal seam, if your coal seam lies horizontal you can follow it without difficulty. If it is broken off, you have got to find it again, and you have got to do a whole lot of rock work to find it. The lack of regularity increases the cost.

Mr. VERTREES. Is there any special feature with reference to the danger of gases in the working of mines; that is to say, it is much more dangerous in some fields than in others, is it not?

Mr. BROOKS. Yes, sir; of course the presence of gas increases the danger and increases the cost, necessarily.

Mr. VERTREES. What are the conditions of these fields?

Mr. BROOKS. In the Bering River field the coals are gaseous. I think the same holds true in the Matanuska field, but as I have said before, we know somewhat less about that field.

Mr. VERTREES. What effect has this folding in the matter of crushing the coal?

Mr. BROOKS. That, of course, is another very serious matter. In the course of folding the coal is so crushed that it may be practically worthless—that is, worthless for domestic or steam coal. If the coal seam is crushed you can not mine it except you take the product and make coke of it, and that of course, decreases the value of the coal very materially.

Mr. VERTREES. Now, take the question of coking right there, and the making of coke; is there any market for coke there on the Pacific coast?

Mr. BROOKS. The total consumption of coke on the Pacific coast is now about 128,000 tons. It takes about a ton and a half of coal to make a ton of coke. So that under the present market you could not use more than 200,000 tons of coal to provide the coke which is now consumed on the west coast.

Mr. VERTREES. Then, if I understand you, while there is much coal in the regions you have mentioned—a great deal of it at high grade—there are physical, practical difficulties in the way of mining that which makes a commercial value problematical.

Mr. BROOKS. That is true of certain of the beds. Of course there are beds there that we know can be mined.

Mr. VERTREES. What beds do you say that is true of, principally, Mr. Brooks?

Mr. BROOKS. There are a great many beds in the Bering River field. The presumption is, and the evidence is, that some of those beds now can probably be mined, although you may have a large percentage of lack coal in the mining of any one of them.

Mr. VERTREES. Has there been any mining development in Alaska at all?

Mr. BROOKS. The mining there is practically nil. There are a few thousand tons produced, chiefly lignite. There has been no mining.

Mr. VERTREES. Then, if I understand your answer, it means that there has really been no experience in Alaska by which you can determine how mining can be carried on and what its cost would be?

Mr. BROOKS. That is true.

Mr. VERTREES. As in other fields?

Mr. BROOKS. There is one exception. There has been a little mining, a few thousand tons, in Bering River fields, but that is only one end of the field, and there is very little mined on the other end.

Mr. VERTREES. Now, I will ask you to state to the committee the coal conditions so far as the market and use of coal is concerned, both in Alaska and on the Pacific coast. Where do those people get their coal on the Pacific coast?

Mr. BROOKS. Alaska consumes about 100,000 tons of coal annually, and 75 per cent of that practically comes from British Columbia.

The CHAIRMAN. Vancouver.

Mr. BROOKS. Vancouver Island.

Mr. VERTREES. And where does the other 25 per cent come from?

Mr. BROOKS. From the State of Washington; that is Washington coal. Those figures are for 1908. That percentage varies, but I think the percentage of domestic coal, the Washington coal in use in Alaska, has been decreasing right along for some years. In the States of Washington and Oregon the production is some three and one-half million tons, and that is consumed in the States of Washington and Oregon, and some is shipped to California.

Mr. VERTREES. What is the quality of that coal?

Mr. BROOKS. It is a bituminous coal; a rather low grade, inferior to the British Columbia coal and the Vancouver Island coal.

Mr. VERTREES. Now, go on down, please, as far as San Francisco.

Mr. BROOKS. California consumes about a million tons of coal, of which 75 per cent is imported. The other 25 per cent comes from Oregon, a little mined in California, and from Washington. I think 7 per cent in 1908 came from British Columbia, about 40 per cent from Australia, and the balance from Japan. I could also add there is some Welsh and English coal used in California. It is a small percentage.

Mr. VERTREES. Take the consumption by the United States Navy,

Mr. Brooks. What is the consumption by the navy annually of coal, and where is that coal gotten?

Mr. BROOKS. Figures recently furnished me by the Navy Department show a consumption on the Pacific coast of the United States of 50,000 tons annually. That does not include the trans-Pacific stations.

Mr. VERTREES. Figured in dollars, what would that cost?

Mr. BROOKS. They bring that coal from the Pocahontas field, and it costs the Government in the neighborhood of \$7 a ton. There is about a million dollars' worth of coal which is consumed on the west coast of the United States. Of that \$7 about \$5 is represented by freight charges.

Senator FLETCHER. How do they get it there?

Mr. BROOKS. It is sent around the Horn.

Senator FLETCHER. The Pocahontas fields are in West Virginia?

Mr. BROOKS. Yes. That is brought from Norfolk.

Mr. VERTREES. Are there any fields in Alaska that would compare with the Pocahontas fields if they were developed and the Government could get the coal?

Mr. BROOKS. Both the Bering River and the Matanuska fields would furnish coal practically equal to the Pocahontas grade.

Mr. VERTREES. Now, without regard to the cost of mining, and assuming that the mines were opened there, and the coal could be furnished to the Government, what would be the saving annually to the Government?

Mr. BROOKS. You would have to add to the figures that I gave you the amount consumed on the Asiatic stations to a certain extent, because some of that coal is shipped across the Pacific Ocean, so that I should say the saving would be at least half a million dollars if we had the Alaskan coal fields opened up.

Mr. VERTREES. You mean by that an actual saving of that amount of money per annum to the Government now paid in the way of freight?

Mr. BROOKS. Yes; it certainly would amount to that, if you included the other government ships in use—the army transports, the revenue-cutter vessels.

Mr. VERTREES. Can you answer this question: That is, as to ships that come around the Horn from the east to the west coast, what per cent of the freight of a ship is used, is regarded as necessary to bring her around?

Mr. BROOKS. You mean what percentage is consumed?

Mr. VERTREES. What percentage?

Mr. BROOKS. About a fifth. If you took an 8,000-ton collier. I think that would consume about a fifth of its freight in going around the Horn; that is, a fifth of the coal it would carry, or at least one-fourth of its cargo.

Mr. VERTREES. Then if I understand you, it is a matter of very great importance to the Government, that the high-grade fields of coal on the Pacific coast—and there do not seem to be any anywhere else than in Alaska, so far as known—should be developed, so far as the Government is concerned?

Mr. BROOKS. It seems to me it is of the very first importance. In the first place, we would have the actual saving of half a million dollars; and in the second place, I fail to see how we could furnish our Pacific fleet with coal by way of the Horn in case we had a war on the Pacific; our Cape Horn route would be cut off by the enemy, and I do not see that we could get it in any other way except to ship it across the continent for the use of the fleet.

Mr. VERTREES. So that your idea is that it is not only a matter of great annual saving to the Government, amounting to half a million dollars per annum, but that there should be a base of coal supply at any rate?

Mr. BROOKS. It would appear to me to be so, but of course that is a matter for a naval officer to pass judgment upon.

Senator SUTHERLAND. You do not mean that it is necessary to ship coal across the continent, do you?

Mr. BROOKS. I mean if they wanted to get the highest efficiency out of their battle ships they would have to use eastern Pocahontas coal.

Senator SUTHERLAND. How about the Colorado coal?

Mr. BROOKS. There is high-grade coal there. The navy's report would indicate that the only coal which really suits them is the Pocahontas coal. I believe the Alaska fields will furnish coal that will suit them just as well when they are opened up. It might be that some of the Colorado coal, and possibly Wyoming coal, could be used in an emergency.

Mr. VERTREES. Now, as a matter of conservation of the coal of the United States, what would you say as to that? In what way would it conserve and preserve the coal of the United States?

Mr. BROOKS. The opening of the Alaskan coal fields would save the coal we are burning up in taking coal around the Horn. It would also save the coal we are burning up in hauling iron, both malleable and pig iron, across the continent, or part way across the continent. It would conserve the iron and coal which are nearest the centers of population, which are the most valuable. I should explain that the Alaska coal includes good coking coal, of which now we have none on the west coast under development. There is plenty of iron there, but there is no coke to develop it.

Senator FLETCHER. Where is the iron ore that you speak of?

Mr. BROOKS. We have it in Alaska—in southern California. The California is, perhaps, the best known.

Senator FLETCHER. What part of Alaska?

Mr. BROOKS. In southeastern Alaska; but we can not consider Alaska because we are not quite sure of the quantity or quality. In southern California we have plenty of it.

Senator SUTHERLAND. Do you know of great deposits of iron in Utah?

Mr. BROOKS. I know there are such.

Senator SUTHERLAND. Very extensive deposits?

Mr. BROOKS. I was thinking of getting it right on tide water. That is the iron that would be most valuable for utilizing Alaska coke. Now, the best information that we have indicates that about a million tons of iron, raw and manufactured, are used on the west coast. Now that means that that iron is being taken from Colorado or from the East out there and utilized, and it means a direct loss on the amount of coal consumed in hauling it out there.

Senator SUTHERLAND. There are very extensive deposits of iron in the Rocky Mountain States, particularly in Colorado and Utah?

Mr. BROOKS. Of course they are manufacturing it there. There is no iron manufactured on the west coast, except in California and Washington. There they are bringing some of their pig iron from China.

The CHAIRMAN. Of course you know about the big iron ore fields in Minnesota; where we produce over half of the iron ore in America?

Mr. BROOKS. Yes, sir; I do.

Mr. VERTREES. Now, what was the cost per ton of high-grade coals on the west coast?

Mr. BROOKS. According to the figures for 1908, bunker coal, which is the easiest to compare, cost about \$4 at Seattle and about \$8.50 at San Francisco. And the other ports ran in between. That is, coal delivered to ships. That is over twice as much as coal on the east coast.

Mr. VERTREES. So far as the people of that part of the United States are concerned, would not the development of these fields and areas we have spoken of, in addition to the features you have mentioned, result in a great reduction of cost to them?

Mr. BROOKS. It certainly would; because it would bring in the Alaska coal in competition with the Australian and English and British Columbia coal. As it is now, the foreign coal commands the market out there because the State of Washington only supplies itself.

Mr. VERTREES. And so far as Alaska is concerned, what effect would it have on the matter of the forests of Alaska?

Mr. BROOKS. The development of the coals of the interior would prevent the burning up, or at least tend to conserve the forests, keeping them from being destroyed. They are now being used for fuel.

Mr. VERTREES. Relative to the forests of Alaska, Mr. Brooks?

Mr. BROOKS. The southern coast, southeastern Alaska, is heavily forested up to an altitude of 3,000 feet. Then the upper limit of timber falls gradually until on Prince William Sound it is only a few hundred feet above sea level. There is considerable timber just east of Copper River. There is considerable timber on Cook Inlet. Inland it is only sparsely forested.

The CHAIRMAN. That is mainly spruce—spruce and cottonwood?

Mr. BROOKS. In the interior, yes; and white birch.

Mr. VERTREES. Is it used for fuel?

Mr. BROOKS. Yes; it is universally used for fuel in the interior because there is no coal mined there and no chance to do any mining.

Mr. VERTREES. Do you know where the Chugach National Forest is?

Mr. BROOKS. It includes the area in the neighborhood of Prince William Sound, and a part of the Kenai Peninsula.

Mr. VERTREES. As a forest reserve, what is its condition?

Mr. BROOKS. There is about a quarter of it that has no timber on it at all.

Mr. VERTREES. Has it ever had any on it, so far as you can see?

Mr. BROOKS. If that model which I have in the other room were brought in it would show that.

Mr. VERTREES. We have a model and a relief that I think would give a better idea of the situation. A great deal of it is in the high snow ranges. I wish you would just show the committee where the timber regions are along the valleys.

Mr. BROOKS. On that model the timbered areas are colored, so far as we know them.

Mr. VERTREES. You mean they are colored on this model?

Mr. BROOKS. Yes, sir. [The relief model of Alaska was here exhibited to the members of the committee.] I do not know whether that is visible to all of the committee. The dark line indicates the area of pretty heavy timber; the pale green indicates the light timber; the gray—

Senator FLETCHER. Does that indicate the valleys also, Mr. Brooks?

Mr. BROOKS. It happens to in this case. From where you see it the timber, of course, is on the valleys. Now, these brown colorings here are the areas above timber, and the white are the snow and ice.

The CHAIRMAN. Can you point out on that diagram there, as near as you can, the boundaries of that forest reserve?

Mr. BROOKS. It comes from here [indicating] from Cape Suckling northward, up into this high range here [indicating], then follows this divide up in the high range there, swings around Prince William Sound, and takes in this little belt of timber along the Cook Inlet here [indicating].

The CHAIRMAN. Does it take in all the Kenai Peninsula?

Mr. BROOKS. About the northern two-thirds, as I recall, and then it crosses in those high ranges down to the Pacific again. There is timber here, and in the Katalla regions there is considerable timber, and on Prince William Sound there is very little timber.

The CHAIRMAN. There is a little bit back of Valdez?

Mr. BROOKS. In those sheltered valleys you get a little timber.

Mr. VERTREES. About four-fifths has none?

Mr. BROOKS. It has none; it is above the timber line.

Senator FLETCHER. It is above the timber line?

Mr. BROOKS. The timber line is very low there, except in the sheltered valleys. The timber crawls up where you get a sheltered valley.

Senator FLETCHER. Where you put a mark between there, Mr. Brooks, to what extent does that indicate the valleys?

Mr. BROOKS. It practically indicates the valleys; that is the way the timber line was determined.

Mr. JAMES. How high up does timber grow there?

Mr. BROOKS. Down in southeastern Alaska it runs up two or three thousand feet, a little more; then when you get up to Prince William Sound it is only a few hundred feet above the water, in places it may rise to a thousand. Then over in the Cook Inlet region it rises to 1,200 or 1,500 feet.

Mr. VERTREES. Where is Mount St. Elias?

Mr. BROOKS. It is right here [indicating on model].

Mr. VERTREES. Where is Mount McKinley?

Mr. BROOKS. Mount McKinley is this point here [indicating].

Mr. VERTREES. Where is the Tanana Valley?

Mr. BROOKS. The Tanana is a tributary of the Yukon and lies in central Alaska. This broad, flat valley in there [indicating].

The CHAIRMAN. What is the name of that great big glacier there southeast of Katalla?

Mr. BROOKS. That is the Bering Glacier and the Malaspina Glacier.

The CHAIRMAN. The Bering is the first one, and the other is the Malaspina. Those glaciers make a very good part of the forest reserve, do they not?

Mr. BROOKS. That area is not included in the forest reserve, but over in here [indicating] we have a good many fine glaciers within the forest reserve.

The CHAIRMAN. Is there not a glacier right back of this Bering field?

Mr. BROOKS. The Bering field is cut off by a glacier; that is, apparently, the claim is taken. It was when I was there.

The CHAIRMAN. Professor Brooks, the timber there back of Valdez and these other valleys, is not it chiefly a small grade of spruce and some cottonwood and birch?

Mr. BROOKS. Yes.

The CHAIRMAN. And very little what you would call real merchantable timber?

Mr. BROOKS. I think very little around Prince William Sound. There is some around Katalla and some on Cook Inlet.

Senator SUTHERLAND. Where is the town of Nelson?

Mr. BROOKS. It is not located on this map.

Mr. VERTREES. Something has been said, Mr. Brooks, about the agricultural possibilities of the Tanana Valley. What do you know about that?

Mr. BROOKS. Last summer I rode through the Tanana Valley going through here [indicating]. I have been along and through the Tanana Valley at different times. I have been very much impressed with the fine standard of grass that you get along through that valley along the trail there. A great many farms have been taken up, mostly in connection with the little taverns along the trail. They raise a great many vegetables and they raise grain.

Mr. VERTREES. Can you state what it is they do raise?

Mr. BROOKS. At Fairbanks they can raise oats; they have done it, and they have done it at Rampart; but most of the farming so far has been potatoes.

Mr. VERTREES. Irish potatoes?

Mr. BROOKS. Yes; and Alaska is to-day producing quite a percentage of its own potato crop. We know that by the fact that while everything else of the importations into Alaska have increased, potatoes have not increased.

Mr. VERTREES. Is that the best valley?

Mr. BROOKS. I think the Tanana is probably the best, though possibly the region just north of Cook Inlet may be just as good.

Mr. VERTREES. Take the Tanana Valley; how large is that, Mr. Brooks?

Mr. BROOKS. The basin there includes, I think, about eight or ten thousand square miles; perhaps 20,000.

Mr. VERTREES. How wide would you say it is for agricultural purposes?

Mr. BROOKS. There is an area right here [indicating] of from 150 to 200 miles, from 30 to 50 miles in width, which contains a good deal of arable land; just what percentage, of course, it would be hard to say.

The CHAIRMAN. There is some arable land in the Copper River Valley, is there not?

Mr. BROOKS. Yes, there is; but the trouble in the Copper River Valley is that it is pretty dry there, and the farming generally there, the best farming, is done by irrigating. They have to irrigate some.

The CHAIRMAN. And the west side of the Kenai Peninsula, too?

Mr. BROOKS. There is a good deal of arable land there. But unfortunately there is some timber, and it costs considerable to clear the land.

The CHAIRMAN. That is where the Russians had their farms?

Mr. BROOKS. Yes, sir; they had one there, and they had one at Yakutat.

Senator SUTHERLAND. Where is the town of Nelson we have heard so much about?

Mr. BROOKS. I understand it is near Cordova. When I saw the site there was nothing there. It is something over a year ago.

Mr. VERTREES. So, from what you have said about that Chaguch forest reserve, I infer that you know no reason why there should be a forest reserve there?

Mr. BROOKS. I think that the most of it should be thrown back. There is possibly some timber there east of Controller Bay. There may be timber worth looking after, but on Prince William Sound I can see no reason at all for a forest reserve there, because what little timber there is is only for local use, and the rainfall is so heavy there that there is no reason for protecting it from forest fires.

Mr. VERTREES. Can you state what the rainfall is?

Mr. BROOKS. It varies from 110 to perhaps 130, 140, or perhaps 150 inches.

Mr. VERTREES. Per annum?

Mr. BROOKS. Per annum; yes, sir.

Mr. VERTREES. What is the snowfall there?

Mr. BROOKS. Along the mountain range they get about 12 feet of snow. It differs, so that I do not know exactly.

The CHAIRMAN. What would be the first essential, if we are going to develop the Katalla coal fields? What would be the first prerequisite?

Mr. BROOKS. I think the first requisite would be for somebody to have permission to mine some coal.

The CHAIRMAN. What about transportation?

Mr. BROOKS. There are two ways of getting at it—one to build in from Cordova; the shortest distance there is about 54 miles. Of course, the way the railroads have been surveyed in, it makes it considerably more than that. The other is to build up directly from Controller Bay.

The CHAIRMAN. Katalla?

Mr. BROOKS. And that would make a difference of about 25 miles.

The CHAIRMAN. Is not the building of one or the other of those railroads the first prerequisite to the development of those mines?

Mr. BROOKS. Of course, you can not do anything with the mines until you build a railroad.

Mr. VERTREES. I was about to ask you what effect the legislation of the United States, with reference to Alaska, or if you please, the attitude that the Government has assumed toward Alaska, has had upon the development and the population of Alaska during these years you have visited there?

Mr. BROOKS. I think Alaska is retrogressing at the present time. People are getting discouraged and are leaving. I think it is largely because of the coal situation, because on the development of coal fields depends the construction of railroads, and without railroads Alaska can only reach a certain point. They can only mine the rich placers.

Senator PURCELL. When did you make your investigation of this reservation?

Mr. BROOKS. I was there first—I made my first trip there in 1902, and I have been in there three or four times since then.

Senator PURCELL. When was it set apart; when was it withdrawn temporarily?

Mr. BROOKS. I think first in 1906 or 1907—I do not recall.

Senator FLETCHER. The last was in 1908.

Senator PURCELL. I was asking him about it. That was withdrawn by the Secretary in 1908.

Mr. VERTREES. It has been added to. It has been increased three times.

The CHAIRMAN. The first was in 1906. Mr. Finney knows about that.

Mr. FINNEY. The first was in 1907; two additions were made to it, one in 1908 and one in 1909.

Senator PURCELL. When was it that you made your first investigation of this and found that only one-quarter or one-half of it was good?

Mr. BROOKS. You understand we have had twelve or fourteen parties in Alaska every year for the last twelve or fifteen years, so that what I say is not only based on my own investigations, but on that of other men.

Senator PURCELL. Have you made investigation of that reservation for the purpose of ascertaining how much of it is covered by timber?

Mr. BROOKS. No; but in our service we naturally become acquainted with the distribution of timber. In making surveys it is natural we should know where the timber line is.

Senator PURCELL. Did the department have your reports or the reports of your agents on that question?

Mr. BROOKS. We have never made any official statement in regard to the matter, except in a very superficial way.

Senator PURCELL. When was this map prepared that you have?

Mr. BROOKS. This map [indicating]?

Senator PURCELL. No; the other.

Mr. BROOKS. The model?

Senator PURCELL. Yes.

Mr. BROOKS. It is a model that was revised for the Seattle Exposition. This is a new copy of it, but it is the same model with a few changes on it.

Mr. VERTREES. You were speaking about the coal and quantities of coal and conservation of coal, Mr. Brooks. To what extent has the coal supply of the United States been exhausted up to this time?

Mr. BROOKS. Why, it is about—it is something less than four-tenths of 1 per cent.

Mr. VERTREES. Of the total supply?

Mr. BROOKS. Of the total supply.

Mr. VERTREES. In other words, 99½ per cent of the coal of the United States, the coal supply, that which is available, still remains untouched?

Mr. BROOKS. Yes.

Mr. VERTREES. Does that include Alaska or not?

Mr. BROOKS. No; that does not include Alaska.

Mr. VERTREES. So Alaska is exclusive of that?

Mr. BROOKS. Alaska is exclusive of that; yes, sir.

Senator SUTHERLAND. You mean only four-tenths of 1 per cent of the known coal bodies of the United States?

Mr. BROOKS. Yes, sir.

Senator FLETCHER. How does that apply as to Pocohontas?

Mr. BROOKS. I could not give the details of that, although they are on record in our reports.

Senator FLETCHER. Do you know if there is any coal in this reservation of some twenty-six million acres in Alaska; forest reserve?

Mr. BROOKS. In the Chugach forest reserve?

Senator FLETCHER. In all of them.

Mr. BROOKS. The Bering River coal field lies in the Chugach forest reserve.

Mr. VERTREES. These deposits lie there?

Mr. BROOKS. Yes; practically the entire Bering River field lies in the Chugach forest reserve.

Senator FLETCHER. I had in mind that area you pointed out on the model there.

Mr. BROOKS. That included the Bering River field, and also includes the lignites on the east side of Cook Inlet.

The CHAIRMAN. The Matanuska field is not in this forest reserve?

Mr. BROOKS. No; that lies to the north.

Senator SUTHERLAND. Professor Brooks, I would like to have you answer this question if you can—based on the consumption of coal during the past ten years—how long would it take, in your judgment, to exhaust the coal supply in the United States proper, exclusive of Alaska?

Mr. BROOKS. I do not believe I can reply to that question. I have not worked on that subject. I know that the rate of consumption is increasing very rapidly.

Senator SUTHERLAND. I know; but I say, based upon the consumption, the rate of consumption we have had during the past ten years?

Mr. BROOKS. I think that our average production is about 400,000,000 tons, and our reserves are something like three thousand billions—I have not figured it out.

Senator SUTHERLAND. Of course, we know the consumption will increase.

Mr. BROOKS. It is increasing, and at an enormous rate, of course.

Senator SUTHERLAND. I am asking you to assume that the rate of consumption for the last ten years will continue in the future, and then if you can give us an estimate of how long the coal supply will last?

Mr. BROOKS. I have not figured that out, Senator, so I can not give that.

Senator SUTHERLAND. Will it be hundreds of years, or thousands of years?

Mr. BROOKS. It would certainly be hundreds of years.

Senator SUTHERLAND. Hundreds of years?

Mr. BROOKS. Yes, sir; you can divide it out.

The CHAIRMAN. Professor Brooks, what is the value of that Bering Sea coal; I mean, what is the value of that coal without any railroad, what is its value to-day?

Mr. BROOKS. Of course, it has simply a speculative value then. It has no value until you can get it out, in one sense; and yet as long as there is a possibility of building a railroad into it, it has a speculative value.

The CHAIRMAN. Assuming a railroad was built in there, either from Cordova or from Controller Bay to Katalla—suitable transportation was furnished—what would be a fair royalty for the mining of coal there, considering the conditions and difficulties and climate of Alaska?

Mr. BROOKS. Well, a railroad, you mean?

The CHAIRMAN. Yes. Supposing the Government leased it instead of selling it?

Mr. BROOKS. Well, I should say you would have to put the royalty very low, otherwise the field would never be developed. I could not speak very definitely, but I think the first leases would probably have to be not over 8 cents, but I think most likely less than 5; and I think if you had 10 cents you would probably discourage anybody from mining there. My idea, if it was leased, would be to put a very low royalty on it for the first ten years, for it will take at least ten years to build up a market for that coal. While there is no coal like that on the west coast, at the same time, the entire coal consumption on the west coast is only about four and one-half million tons. If you put a million tons of coal on the market, it would demoralize the market, while a million tons of coal is not very much to support 50 miles of railroad; so that the first ten years would be needed, I think, to develop the market on a royalty basis, and you would have to put the royalty very low indeed.

The CHAIRMAN. How does that coal compare with the Vancouver fields in British Columbia?

Mr. BROOKS. It has the advantage for steaming use of about 25 per cent, but a little more than that for the use of vessels, because it is more compact.

The CHAIRMAN. You are familiar with the climate there, and the conditions both in Vancouver and in the Bering fields? How much more would be the cost of mining under the conditions prevailing in the Bering field than down on Vancouver Island?

Mr. BROOKS. The differences would be due to the fact that in the Bering fields the coals are very closely folded, so that the cost of mining would be a good deal more than on the Vancouver coals.

The CHAIRMAN. Would not the climatic conditions have some effect?

Mr. BROOKS. They would have some effect, but if you had a coal-mining industry developed there and the population there, I do not think that difference would be so very marked, because you would have a population to draw on for labor. When you start out, those conditions would be very adverse until you are producing a large amount of coal.

The CHAIRMAN. Until you have developed your mining industry?

Mr. BROOKS. Until you have your market; that is the thing. You want a market, in my opinion, for a million tons of that coal before you can expect to make any profit out of it.

The CHAIRMAN. Assuming that there were railroad transportation facilities, what would be the value of that coal per ton in the ground?

Mr. BROOKS. Well, you could not put a value per ton in the ground on the entire field.

The CHAIRMAN. But I mean of the merchantable coal?

Mr. BROOKS. Of the coal that you could mine, you could hope to mine in the next thirty or forty years, or something of that kind?

The CHAIRMAN. Yes.

Mr. BROOKS. Disregarding the coal which was lying deep, which could not be mined for fifty years, or even for a century, I should say that the value of that coal in the ground would probably be not more than half a cent a ton.

The CHAIRMAN. And how much in that field, from your acquaintance with it—how many tons of merchantable coal could you average the acre, taking the field as an entirety in averaging it up?

Mr. BROOKS. I do not believe it would be possible to answer that question, even approximately. We know that some parts of the field probably would not produce over 10,000 tons to the acre, while other parts of the field, from the surface conditions, might produce hundred thousand tons to the acre, and it is simply impossible to say how much the average would be in that field, especially in view of the fact that so many coal beds are crushed, and might have to be thrown out altogether from a commercial standpoint.

The CHAIRMAN. What would be, in your opinion, the probable waste there—I am not using scientific terms, you understand—I mean the waste in mining?

Mr. BROOKS. The percentage of recovery, you mean?

The CHAIRMAN. Yes; that is what I mean.

Mr. BROOKS. I do not believe I can throw any light on that, except to say that I think the average recovery is about 60 per cent now. In some districts you might get up as high as 80 or 90 per cent. I think in the anthracite mining districts in Pennsylvania they run as high as 90 per cent. What you could do in that field I do not believe any mining engineer would be able to state, unless he had actually opened up the coal. I suppose it is fair to say that it ought not to be any less than the average recovery in the States.

The CHAIRMAN. Sixty per cent?

Mr. BROOKS. Sixty per cent.

Mr. VERTREES. From the indications, from what you have mentioned, it would be a great deal more?

Mr. BROOKS. Let me explain that; that wasting in mining, my idea would be, will not be left in the mine. If you take out your fine coal and use that as coke, that is not waste; but if your fine coal is left behind your loss might be a great deal more, of course.

Mr. VERTREES. Your answers already indicate that, so far as the mining was concerned, at least for a long time to come, there would hardly be an extensive market.

Mr. BROOKS. That is very true. But if we could in the future—say, in the next ten or twenty years—develop an iron industry on the west coast and smelt our iron ores there we could probably use up that fine coal that would otherwise be lost.

Senator SUTHERLAND. Before we adjourn I want to ask you one other question, Professor Brooks. I understood you to say that the mining and developing of the coal in Alaska would conserve the forests?

Mr. BROOKS. Yes, sir.

Senator SUTHERLAND. Conserve the wood supply?

Mr. BROOKS. Yes, sir.

Senator SUTHERLAND. Would not the rapid development of the water power in the United States in turn tend to conserve the coal supply?

Mr. BROOKS. I should say it would. I want also to state that my work is entirely in Alaska, and I have paid very little attention to the problems in the States—very little.

Senator SUTHERLAND. One other question. Are you familiar with the coal conditions in Great Britain?

Mr. BROOKS. I am familiar with them somewhat through the literature.

Senator SUTHERLAND. In a general way?

Mr. BROOKS. Yes, sir.

Senator SUTHERLAND. How long have they been operating their coal mines there?

Mr. BROOKS. A number of centuries. I think it goes away back to the fourteenth or fifteenth century.

Senator SUTHERLAND. What is the present condition of their coal mines—are they approaching exhaustion?

Mr. BROOKS. In 1872 they appointed a royal commission to investigate the matter of coal mining, and I think they estimated the amount of coal they had left, and they published a report on it in which they stated that the coal might be exhausted, I think, in something like three or four centuries, under certain conditions, certain postulates. In 1902 they appointed a second commission, which went into the whole question again, and they reestimated their coal and found they had more coal than they had thirty years before, and this committee declined to make any statement as to how long the coal would last.

Senator SUTHERLAND. Notwithstanding the fact that they have been mining coal for centuries, they still think there is supply for hundreds of years to come?

Mr. BROOKS. Yes, sir. It seemed from the report that they thought the coal would last for a long time; and, furthermore, after that report was published they took off the export duty on coal. Now, that indicated that they were not afraid to export their coal, and that led me to believe that the impression of the commission was that there was not so much danger of the exhaustion of the coal as they had thought when the first commission made its report.

Senator SUTHERLAND. How about the coal conservation movement in England?

Mr. BROOKS. I do not know anything about that. I am simply familiar with the reports of the royal commission. They went into the details of the use of coal, the technology of it, and their interest seemed to be to get more value per ton per heat unit out of the coal. That is the question they took up primarily more than anything else.

Senator SUTHERLAND. The effort seemed to be to take out more coal and broaden the market, rather than conserve it?

Mr. BROOKS. Yes. There was a great plea made amongst the miners and the manufacturers, and of course the people that were interested in shipping, to take off this duty on coal; and they made elaborate arguments to show it was not needed, and it worked as injustice.

Senator PURCELL. How large is the area of the coal-bearing lands in the United States compared with the area of coal-bearing lands in Great Britain?

Mr. BROOKS. Well, I think the total coal-bearing lands of England are about 12,000 miles, and we have—I can not be sure

it what the area is, but I can give it to you in another way. I figured out recently that we had about 70 per cent of the known coal posits of the world, including Alaska and the United States, and owing rather liberally for China, although we do not know much out China. England, I think, had only 1 or 2 or 4 per cent, or nothing like that. I can give you those figures a little more finitely.

Senator SUTHERLAND. Perhaps we had better not take the time w.

The CHAIRMAN. Mr. Vertrees, have you any more questions?

Mr. VERTREES. I was not through with the witness, but I do not ink that I can get through with him this evening.

The CHAIRMAN. The record will show the following request for uance of subpoena by Messrs. Vertrees and Rasch:

THE SECRETARY OF THE INTERIOR,
Washington, April 5, 1910.

SENATOR: We respectfully request that Mr. I. P. Taylor, of Seattle, Washington, subpoenaed to appear before your committee to testify as a witness. We are reli-
y informed that Mr. Taylor is a reliable man, and that he will testify that Mr. L. R.
his was pecuniarily interested in deals in public lands with the witness Barr, who
heretofore been examined. We would be pleased to have him subpoenaed for
day, April 15, 1910, and that the subpoena, by telegraph, go forward at once.

Respectfully,

JOHN J. VERTREES.
CARL RASCH.

JOE. KNUTE NELSON,
Chairman Joint Committee of Investigation,
Room 210, Senate Office Building.

The CHAIRMAN. The record will also show the following letter from
ephen Birch, esq., bearing date March 29, 1910:

ONE SIXTY-FIVE BROADWAY,
New York, March 29th, 1910.

G. KNUTE NELSON, Chairman,
Washington, D. C.

DEAR SIR: Complying with the request of your committee and Mr. Brandeis to
ish certain information, I take pleasure in submitting the same herewith:

As requested by Mr. Brandeis, on page 2186, Document 23, we have invested up to
bruary 1st, 1910, about \$16,500,000.00 and have contracted and plans formed to
pend about \$7,000,000.00 more to complete the railroad, etc.

Complying with Mr. Madison's request, page 2189, Document 23, I have looked over
r records and find that during the season of 1908 the Alaska Steamship Co. carried
3 per cent of the competitive business to Nome, and of the total business to Bering
ports, which includes Nome, St. Michaels, and freight for the Yukon River, the
aska Steamship Co. carried 21.3 per cent of the competitive business.

I have no definite figures at hand to show the percentages to other ports in Alaska,
t if we exclude the freight carried by the Canadian Pacific S. S. Co., as requested
Mr. Madison, I believe the percentage would be about the same as above. We are,
course, carrying the largest percentage of freight and passengers to Cordova, the
minus of our railroad, which we are building, due to the Alaska S. S. Co. handling
the material used and the laborers employed in the construction of the railroad.
The records show that 29.7 per cent of the Nome business was carried in foreign
ills and consisted mostly of coal from British Columbia, which is used in the opera-
o of mines on Seward Peninsula.

In answer to Mr. Madison's and Mr. Brandeis's question as to the time I left New
rk City, to the best of my recollection I left New York City on March 24th, 1907,
d went to Seattle by way of Salt Lake and Portland, arriving in Seattle some time
ween the first and fifth of April, and left Seattle not later than the 15th of April.
urived in New York about the 23rd of April.

Very truly, yours,

STEPHEN BIRCH.

The CHAIRMAN. The record will also show the following letter from John N. Steele, esq., dated March 31, 1910, and the inclosures accompanying said letter:

[John N. Steele, general counsel; Francis R. Foraker, assistant counsel.]

M. GUGGENHEIM'S SONS, 165 BROADWAY.
New York, March 31, 1910.

HON. KNUTE NELSON,
*Chairman Joint Committee to Investigate the Interior Department
and Forestry Service, U. S. Senate, Washington, D. C.*

DEAR SIR: In compliance with your directions set out on pages 2231 and 2232 of the "Hearings before the Committee to Investigate the Interior Department and Forestry Service," I beg to state as follows:

I have examined the files of Mr. Eccles and have found therein the following papers herewith enclosed, relating to the subject-matter of your instructions:

- (1) Memorandum of option agreement from A. B. Campbell and others to Daniel Guggenheim (1-5).
 - (2) Paper headed: "Statement of properties, work done, tonnage, and plan of development of coal properties embraced in the foregoing proposition" (6-7).
 - (3) Copy of letter of July 20, 1907, from Curtis H. Lindley to S. W. Eccles (8-9).
 - (4) Telegram under date of August 24, 1907, from Curtis Lindley to S. W. Eccles (10).
 - (5) Letter under date of August 28, 1907, from Curtis H. Lindley to S. W. Eccles (11-13).
 - (6) Letter dated October 16, 1907, from M. K. Rodgers to S. W. Eccles (14-15).
 - (7) Letter of November 9th, 1907, from M. K. Rodgers to S. W. Eccles (16).
 - (8) Letter dated November 14, 1907, from A. H. Storrs to "Mr. Eccles" (17-19).
 - (9) Telegram of December 8th, 1907, from Stephen Birch to Daniel Guggenheim (20).
 - (10) Letter dated December 11, 1907, from Clarence Cunningham to Daniel Guggenheim and "Memoranda of expense account—examination of coal lands by A. H. Storrs" attached thereto (21-22).
 - (11) Letter of December 16th, 1907, from A. H. Storrs to S. W. Eccles (23).
 - (12) Carbon of letter of December 17th, 1907, to A. Chester Beatty (24).
 - (13) Paper purporting to be copy of "Hearing in re coal situation in Alaska. Washington, D. C., March 9th, 1909" (25-60).
 - (14) Carbon of letter dated April 2nd, 1909, to Hon. Frank Pierce, First Assistant Secretary of the Interior (61-65).
 - (15) Carbon of letter dated May 28th, 1909, addressed to Hon. Frank Pierce, Assistant Secretary of the Interior (66-68).
- (NOTE.—Nos. 12, 14, and 15, being carbon copies, have no signature, but I am sure they were signed by Mr. Eccles. This is certainly correct as to Nos. 14 and 15, because from the body of No. 14 it appears that it was written by the president of the Copper River Railway Company and Copper River and Northwestern Railway Company and is signed "President." Mr. Eccles was president of both those roads at that time. No. 15 is signed "S. W. E.," which are Mr. Eccles' initials.)

I have found no other papers, correspondence, or telegrams concerning the matter about which I was directed to make search.

I would like to ask for the following corrections in my testimony:

(a) On page 2346, I am made to say: "I think I know who is the president." That should read: "I know who are the presidents."

(b) On page 2351, I say: "We have one smelter at Tacoma." For the sake of clearness I should like to have added to that answer the following: "The Alaska Synthetic has no smelter any place. The American Smelters Securities Company, in which the Messrs. Guggenheim are interested, has one smelter at Tacoma."

(c) On the same page, in answer to the fifth question put by Mr. Graham, my recollection is that, after making the answer shown in the record, I said substantially: "This company, I understand, is willing to build smelters wherever it can be assured of sufficient ore to justify the expenditure."

I am writing to Judge Lindley, enclosing him a copy of the hearings published as "No. 24," calling his attention to the instructions of the committee on page 2232 and requesting him to send the committee full copies of correspondence as set out.

I am, with great respect,

Very truly, yours,

JOHN N. STEELE

1.]

MEMORANDUM.

A. B. Campbell, Clarence Cunningham, and M. C. Moore, acting for themselves and certain parties associated with them, as hereinafter explained and hereinafter called vendors, make the following representation and proposal to Daniel Guggenheim, of the city of New York, hereinafter called the vendee.

The said Cunningham, Campbell, and Moore, with thirty other parties, have acquired purchase from the Government of the United States, under the federal coal land laws, thirty-three tracts of coal land of one hundred and sixty acres each, aggregating 20 acres, situated in the Kayak recording district of Alaska, near the Bering River, but 25 miles from Katalla, and also have acquired certain inchoate water rights on the Kustakaw, intended to be used in the exploitation of said properties.

The title to these lands rests in final U. S. receiver's certificate of entry, issued one each of said thirty-three persons, and the papers in application for patent are now before the Commissioner of the General Land Office for his action thereon.

In order to consolidate the several interests for the purpose of dealing with said properties as an entirety, it has been determined that each of said entrymen shall convey his title to his individual tract to the Union Trust Company, of Spokane, Washington, in trust for the purpose of transmitting or dealing with the title to the consolidated tract in such manner as shall be directed by C. J. Smith, R. K. Neill, W. Collins, Frederick Burbidge, Fred H. Mason, A. B. Campbell, and Clarence Cunningham, or a majority of those acting as a committee of said entrymen appointed for that purpose.

Conveyances by some of said entrymen to said trust company have been executed and delivered, and it is contemplated that all will execute similar conveyances within short time.

A meeting of said entrymen was recently held at the city of Spokane, in which twenty-five out of the thirty-three participated. At said meeting a resolution was unanimously passed authorizing said committee or a majority of them to enter into negotiations with parties with a view to the equipment, development, and operation of the consolidated property and the sale of its products.

Acting for themselves and as such committee representing their associates under said resolution they submit to Mr. Guggenheim for his consideration the following proposal:

1. A corporation shall be formed under the laws of some State of the Union, under which laws meetings of directors may be held without the State of incorporation, and capital stock to be unassessable and no individual stockholders liability.

2. The capital shall be \$5,000,000.00, divided into 50,000 shares of the par value \$100.00 each.

3. There shall be seven directors, three to be named by the vendors, three by the vendee. The seventh director shall be designated by the six named by the parties.

4. The title of all of said properties, including said inchoate water rights, shall be transferred to said corporation, in consideration for which there shall be issued to said vendors 25,000 shares of said capital stock.

5. The other half of said capital stock, viz, 25,000 shares, shall be deposited in advance with the Bank of California, Seattle, with instructions to make delivery of same to Mr. Guggenheim or his nominee upon his payment to said depository to the credit of said corporation of the sum of \$250,000.00, or at the rate of ten (10) dollars per share. Said \$250,000.00 shall be paid in such sums and at such times as may be called for by the board of directors. Said money to be considered as "working capital," to be expended by said corporation in the equipment, development, and operation of said properties. As payments are made by Mr. Guggenheim to said bank the bank shall be authorized to deliver to him one share of stock for each ten dollars so paid by him. Mr. Guggenheim shall have the privilege of paying said amount of working capital at any time and thereupon to receive the entire 25,000 shares of said stock.

6. Should said sum of \$250,000.00 prove inadequate for the purpose of equipping and developing said property, Mr. Guggenheim shall advance or loan to the corporation an additional sum of money not exceeding in the aggregate \$100,000.00, the corporation binding itself to repay such advances on or before three years after the date of making the same, at the option of the board of directors of said corporation, with interest at five per cent per annum.

7. Said corporation shall enter into an agreement giving to said Guggenheim or his nominee the exclusive right to purchase for the period of twenty-five years the entire run of mine coal mined from said property, or so much thereof as said Guggenheim or his nominee may require or demand, for the sum of \$2.25 per ton of 2,240 pounds. The coal is to be delivered at the mine either in bunkers to be provided by the corporation for that purpose, or upon cars, as said Guggenheim or his nominee may direct.

Said Guggenheim or his nominee shall use their best endeavors to make a market for the coal in Alaska and in the ports and cities of the United States, to the end that as large a quantity of coal as possible may be mined. Said Guggenheim or his nominee shall agree to purchase all coal which they may require for use or sale from said corporation.

8. Payment for all coal so delivered to said Guggenheim or his nominee shall be made monthly, upon the basis of weights determined by the mine superintendent, such payments to be made at such place as may be directed by the corporation.

9. The corporation shall convey to such railroad company as may be designated by said Guggenheim, and which shall construct a railroad from tide water to said mines, sufficient ground from its holdings upon which to establish and maintain its tracks, switches, depots, terminals, stations, and other railway facilities.

10. The corporation shall further agree to sell and deliver, during the period of twenty-five years, to such railroad company as may be designated by said Guggenheim and which may construct a railroad from tide water to the mines, all coal which may be required by said railroad company for consumption in its locomotives, shops, stations, and other facilities employed in the construction, maintenance, and operation of its railway, for the sum of \$1.75 per ton of 2,240 pounds, deliveries to be made at the mine in bunkers or on the cars of such railway.

11. The said Guggenheim shall have twenty days from the date hereof in which to determine whether or not he will cause an examination of said properties to be made, with a view to an acceptance of this proposal if such examination proves satisfactory. He shall notify the vendors of such determination within said time by telegram addressed to Clarence Cunningham at Seattle, Washington. Thereupon, if he elects to proceed with such examination, he shall be allowed the period of four months thereafter to inspect the properties and investigate the titles thereto. If such inspection and examination prove satisfactory, he shall give notice of his final acceptance of this proposal by telegram directed to Clarence Cunningham, Seattle, Wash.

Thereupon the terms of this proposal shall be deemed binding upon all the parties and shall be carried into effect according to its tenor and purport.

12. It is understood, however, that said vendee shall not be required to proceed with said examination unless all of the thirty-three of the owners of said coal-land entries, or so many thereof as shall be satisfactory to said vendee, shall have conveyed their respective properties to said trust company, and said trust company shall, under the direction of said committee and as the holder of the title to said properties, have accepted the terms of the proposal and obligated itself to unite with said vendors in carrying the same into effect, in the event the examination of said properties and titles shall prove satisfactory to the vendee, and he shall elect to finally accept the same.

Should the number of entrymen declining to convey their respective tracts to said trust company and participate in this proposal be so great as in the judgment of said vendee will prevent the successful inauguration and conduct of said enterprise, then and in that event this negotiation shall be at an end, and all parties shall be relieved from all obligations arising hereunder.

Witness our hands in duplicate this twentieth day of July, 1907.

A. B. CAMPBELL,
M. C. MOORE,
CLARENCE CUNNINGHAM.

(For themselves and as a committee representing their associates.)

Signed in presence of—

S. W. ECCLES,
CURTIS H. LINDLEY.

No. 2.]

STATEMENT OF PROPERTIES, WORK DONE, TONNAGE, AND PLANS FOR DEVELOPMENT OF COAL PROPERTIES EMBRACED IN THE FOREGOING PROPOSITION.

We hold receiver's receipts for 5,280 acres of coal land in the Kayak District, Alaska. We also have locations covering approximately 1,000 acres additional, which have not yet been entered for patent; also about 2,000 acres of timber land now being surveyed for script entry, upon which it is estimated there is between 40,000,000 and 50,000,000 ft. of spruce and hemlock, also a water right capable of developing 4,000 h. p.

Our equipment consists of buildings, shops, tools, etc., suitable for prospecting, but not sufficient for extensive mining operations, although warehouses, camp and roads will meet our requirements until the property reaches the productive stage.

DEVELOPMENT.

Development, consisting principally of work done to determine continuity and value of coal measures throughout the field, includes cuts, shafts and tunnels, the latter aggregating about 3,000 feet on the veins, exposing clear coal measures up to 60 feet in width.

CHARACTER.

The coal is classed as semi-anthracite, containing 74 per cent to 86 per cent fixed carbon, average 14 per cent volatile, 5 per cent ash, $\frac{1}{2}$ to 2 per cent sulphur and but little moisture. Much of it makes a very fine grade of coke and all of it is a high grade steel and blacksmith coal.

TONNAGE.

So far as is known there can be mined from the "upper measures" above our proposed working tunnel, approximately one hundred million tons. These "upper measures" are contained in less than one half of our field, but as the "lower measures" are but little developed no accurate estimate can be given. It is my belief, however, that they contain nearly as large a tonnage as the "upper measures."

Another group of claims containing approximately forty million tons is accessible from our tunnel and should go with this group.

PLAN FOR WORKING.

Map now in your hands shows location of claims, also proposed tunnel which will intersect all veins of upper measures.

The average depth on these veins above tunnel will be about 2,000 ft. and average width of the 16 veins is probably 6 to 8 feet average slope or pitch 38 to 43 degrees.

Distance from mouth of tunnel to first vein 1,400 feet; to the second vein 2,000 feet. Distance to mouth of tunnel to last vein will be 7,000 feet. Average distance on strike of veins each way from tunnel intersection $1\frac{1}{2}$ miles. —

Katalla coal properties.

[p. 3.]

SALT LAKE CITY, July 20th, 1907.

J. S. W. ECCLES, Salt Lake, Utah.

MY DEAR SIR: In submitting to Mr. Guggenheim the proposal of the committee of coal land owners, framed after conference with the interested parties and signed to-day, it may be advisable to explain the embarrassments surrounding the attempt to obtain recently anything in the nature of an option which would bind the property or enable him to enforce a specific performance. Prior to final entry, a coal land claimant is not permitted to make any contract whatever as to its future disposition. After entry he may do so, and if patents subsequently issue his assignee is protected. To obtain large areas of coal upon the public domain by direct purchase there has to be a number of individuals whose holdings are limited to 160 acres each. So, in consolidating coal properties after entry, we have to deal with as many men as there are 160 acre units in the proposed consolidation. In the present instance there are 33 factors, with 33 kinds of their own. They themselves have appreciated the difficulty in securing concerted action and have devised the plan of conveying to a trust company whose action is to follow instructions from a committee.

Mess. Campbell, Cunningham, and Moore think that their action taken at the conference here will be ratified by practically all of the entrymen. Should there be any dissent by any of the owners the effect of their non-participation will have on the venture will depend on the relative situation of their respective holdings in the com-
posite and the position which they occupy with reference to the general plan of mine development. I do not anticipate that any serious complications will arise even if one or more of the owners should decline to participate.

About all that can possibly be accomplished at this time, it seems to me, is to secure the signatures of the three gentlemen named as a committee and trust to the moral effect of their action upon the few of their associates who have thus far not conveyed to the trust company.

The gentlemen who have signed the memorandum are first-class men of high standing and large affairs, and I do not doubt that they will secure the co-operation of all or

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practically all of their associates. I think it safe to proceed with the examination upon the assumption that there will be no non-participation whose holding would materially impede the orderly development of the property.

Sincerely, yours,

CURTIS H. LINDLEY.

[Telegram.]

No. 4.]

SANTA CRUZ, CAL., Aug. 24, 1907.

S. W. ECCLES,

Care American Smelting and Refg. Co., Salt Lake, Utah.

Your wire of twenty-third. Would not be advisable to accept receivers receipt Alaska coal without careful investigation of all proceedings leading up to their issuance.

CURTIS LINDLEY.

No. 5.]

SAN FRANCISCO, August 28, 1907.

S. W. ECCLES, Esq.,

Care Amer. Smelt. & Refg. Co., Salt Lake City, Utah.

MY DEAR MR. ECCLES: On the 24th inst. I received your wire of the 23rd as follows. "Your letter of the 17th Alaska coal. Would we be justified in purchasing property on receiver's final receipt regardless dates patents will be issued," to which I replied "Your wire of 23rd. Would not be advisable to accept receiver's receipts Alaska coal without careful investigation of all proceedings leading up to their issuance."

Confirming this, I would add that registers and receivers of the federal land office are officers of limited jurisdiction and as a rule of limited capacity. They are not lawyers nor judges and are not sure footed. Their work is always carefully scrutinized by the Commissioner of the General Land Office, who has full power to cancel or suspend the receipts and require the commencement of proceedings de novo. A purchaser of titles resting on these receipts is not a purchaser "without notice," but takes such titles with imputed knowledge of all defects in the antecedent proceedings. Irregularities very frequently occur in these proceedings which have to be patched up leading to embarrassments. The suspension of the veteran certificate and the resulting tangle is a concrete illustration as to what may happen.

On the other hand, patents have an "ironclad potency," are conclusive evidence of the regularity of all antecedent proceedings upon which they are based, and a purchaser takes his title clear. In such cases we rarely go behind the patent. After the patent issues and is delivered the Land Department loses control of the property and cannot recall it. If it goes into equity to vacate it, it must meet and overcome all the presumptions indulged in favor of its validity.

I have found it a delicate matter to deal with and pass on titles to public land resting in receivers' certificates or receipts, and would much prefer that the patents were issued.

As I said, however, in my letter of the 23rd, I do not wish to have it inferred that conveyances made after issuance of final certificate and before patent may not be perfectly good. But the patents are far preferable and relieve the lawyer of a large responsibility in passing upon the regularity of the action of the local land officers.

This is all I intended to say in my letter of the 17th which called forth your telegram.

Sincerely, yours,

CURTIS H. LINDLEY

No. 6.]

SEATTLE, WASH., October 16th, 1907.

Mr. S. W. ECCLES,

President C. R. & N. W. Ry., New York, N. Y.

DEAR SIR: Last evening Mr. Clarence Cunningham called and asked if we had any information in regard to decision about Katalla being retained as the terminus of the C. R. & N. W. Ry. He said he had information from some source which he considered pretty reliable, that the breakwater plan was to be abandoned, in which event he presumed the company would either buy out the Bruner outfit or move back to Chidova. We told him we had heard nothing about it and (while not so informing him) would not have told him if we had known.

He brought up the question of the new road about which we wrote you recently and said he knew nothing about it and thought perhaps we did. As yet we have been unable to get any definite information in regard to it.

During the conversation Mr. Cunningham said he and his associates had incorporated a railroad about two years ago to run from his mines to tide-water on Controller Bay, but that when the Katalla Company started work he gave up his idea, feeling there was not room for two roads and not feeling disposed to antagonize our interests. Now that he had this rumor, the breakwater was to be abandoned, and fearing this company might move back to Cordova, he was anxious you should look into his project before taking definite action. He said he did not like to write you direct, fearing he might be considered as "butting in," but would like to have the subject brought to your attention so that you could ask him for further information should you be interested. In other words, he wanted an invitation to present his plans.

We inclose chart of Controller Bay and have marked in red ink his proposed line, which is a very easy one to construct, there being no engineering difficulties whatever. After reaching Controller Bay it was the intention to cross that bay to Kanak Island, distance of about four miles, by a pile trestle. It is claimed the bay is simply a mud flat and practically dry at low tide, a sandy bottom, and from its protected position not subject to any trouble from storms at high tide.

On Kanak Island he proposed to establish his terminal yards and construct the wharf (shown in red) to the southeasterly end and there establish his wharf and bunkers, (shown in green). This wharf is in a perfectly protected place with plenty of water and is the old Russian anchorage, and, we are informed, is a natural harbor, easy of access, and perfectly protected.

The only disadvantage to this location is the ice flow in winter from Bering River and from the mud flats of Controller Bay, but by filling in the trestle eventually, it could sheer the larger ice from Bering River out through the channel by Strawberry Harbor, as shown by green arrows. The anchor ice from Controller Bay, he claims, could never be a serious trouble, as the ice is what is known as "anchor" ice; dragging on the ground, and owing to the action of the tides never becomes large or very hard.

Mr. Cunningham has had surveys made of the line and filed preliminary maps with the Government; he has also had reports and estimates made by several thoroughly practical men. The figures made for the cost of the entire line, including the trestle and wharf, were \$1,500,000.00, taking into consideration the use of 60-pound rail. He also had an expert ice harbor man remain there one entire winter and make notes twice a month as to the conditions, and they entirely confirm his theory, and in fact says the captain of several vessels who know the place state it is a first-class harbor. He further believes that, with proper representation, the Government would assist in improving the harbor to a certain extent.

He feels that should it be the intention to abandon Katalla and this line was constructed, it would be a very easy matter to follow the old Lake Charlotte survey to a connection with the present Copper River line, as shown in dotted red on blueprint attached, then follow the present line as laid out.

The distance to the mines by this line is about the same as from Katalla—say, 23 miles. The channel between Kanak and Wingham islands, viz, Okalee Channel, is from a mile to a mile and three-quarters in width, and you will see from the chart there ample water.

This letter is written without prejudice to this office, and merely presents a few facts stated by Mr. Cunningham, and at his request. Should you desire any further information or the reports referred to above, Mr. Cunningham states he will be very glad to furnish them, or he would go to New York and see you if you wanted him to.

Yours, truly,

M. K. RODGERS.

P. S.—Mr. Cunningham states this line could be built very rapidly, and by starting work on Kanak Island it would do away with the delays and dangers of lightering.

No. 7.]

KATALLA, ALASKA, November 9th, 1907.

Mr. S. W. ECCLES,

President Copper River & Northwestern Railway, Salt Lake City, Utah.

DEAR SIR: Replying to your telegram October 7th reading as follows: "Do not purchase any coal lands or obligate our interests in any way in coal matters. Have you anything of this kind? If so, to what extent? If Rodgers not in Seattle forward me to him first opportunity."

I received this telegram from Captain Jarvis and replied to it immediately that I had not obligated your company or parties in any way whatever.

When Mr. McDonald, who was opening up a coal mine on Bering Lake, was short of money to meet his obligations here, in order to secure coal to keep the steam shovels

going I advanced him \$6,000.00 and took a mortgage on his sawmill, logging engine, and pile-driving outfit. He wished also to turn over the coal mines, but I was particular not to involve the company in the transaction with the coal property. Mr. McDonald has repaid this \$6,000.00 and the mortgage has been canceled.

Yours, truly,

M. K. RODGERS.

No. 8.]

NEW YORK CITY, November 14th, 1907.

Mr. ECCLES: As a result of my examination of the Cunningham group of coal claims in the Bering River field north of Katalla, Alaska, I would recommend that Mr. Guggenheim should exercise the rights which he has under the agreement of July 20th, made at Salt Lake.

The greater part of the 5,280 acres controlled by Mr. Cunningham and his associates carries coal. Owing to the distance between coal exposures I am unable as yet to state just how many veins there are upon the property, but upon completion of map work now under way I hope to be able to identify some of the veins the entire distance across the property and can then work out cross section, which will determine with reasonable accuracy the number of the seams.

The coal seams vary in thickness from three feet to about twenty-two feet, with some pockets showing thickness of from thirty to sixty feet, but this excessive thickness, I do not believe, will be maintained over very extensive areas.

The quality of the coal is excellent, many samples analyzing under 3 per cent ash. The coal is of a semibituminous character, the volatile hydrocarbons ranging from 7.83 per cent to 14.8 per cent. The holes are quite hard and strong and of rather low specific gravity, as might be expected with the low ash content. The field is considerably faulted and folded, which has resulted in sections in much crushing of the coal, so that a rather high percentage of small coal will be produced in mining, but as most of the veins have such coke qualities that this slack will fuse together in the fire the fine coal can probably all be used for steam purposes or for coke making.

As regards their coking qualities, these coals are peculiar in that the coke made seems to be of excellent quality, although coals with such low volatile content are usually rated in the noncoking class.

It would seem to me advisable in considering these coals for coke that it be understood that by-product ovens would be necessary, as there is some danger that certain of the veins would not maintain the ovens at a sufficiently high temperature to make good coke in the bee-hive type of coke oven.

With no developments showing the depth to which the coal seams run, it is impossible to make any close estimates as to the quantity of coal on these lands, but I am confident that there will be upwards of fifty millions of tons for shipment, and probably very much more than this amount.

The streams crossing the Cunningham lands expose the outcrop of so many seams that the development of a considerable tonnage can be quickly secured and, as I understand your railroad plans and harbor, will not be in shape for any considerable coal tonnage before January, 1909, it would seem that if Mr. Cunningham can secure his patents and development work be started promptly, there should be no difficulty in securing the desired tonnage of about 2,000 tons of daily output early in 1909. The railroad line from Katalla to the property is one of very favorable grades, and apparently involves no very heavy work.

I am preparing maps showing the coal outcroppings as we found them, and from this will outline a suggested development scheme to meet the requirements for tonnage which you ask for.

The probable cost of mining on this property I think will be very close to the price fixed in the Salt Lake agreement of July 20th, as that at which Mr. Guggenheim has the right to take the entire product. This of course would show little or no profit for the mining company.

Until sufficient development work has been done to more clearly show the character of the faults and folds which exist in the field it will be difficult to make a close estimate on the probable cost per ton of the product, but sufficient disturbances can be seen on the surface to warrant the belief, when considered in connection with the high rates of wages which prevail in that section, that the cost will be rather high.

Considering the excellent quality of the coals, their nearness to tidewater, and consequent low transportation costs and the present coal scarcity at some of the Pacific ports and the rapid increase in the demand all along this coast, there seems to me no doubt as to the advisability of securing control of this coal field.

Respectfully submitted.

A. H. STONES.

INVESTIGATION INTERIOR DEPT. AND BUREAU OF FORESTRY. 2855

[Telegram.]

No. 9.]

SEATTLE, WASH., Dec. 8. 1907.

DANIEL GUGGENHEIM,
71 Bway., N. Y.

Your telegram regarding Cunningham agreement received. Copy delivered personally to Cunningham.

STEPHEN BIRCH.

No. 10.]

SEATTLE, December 11th, 1907.

Mr. DANIEL GUGGENHEIM,
No. 71 Broadway, New York City.

DEAR SIR: Enclosed herewith please find copy of expense bill incurred by Mr. A. H. Storrs during his examination of our coal fields in Alaska, as per your instructions to me by wire August 8th, 1907.

I have sent a duplicate of this memorandum to Mr. Storrs, requesting him to forward same to your office with his approval, but fearing he may be away from Scranton I would be pleased to have you send me check for the amount, and oblige,

Yours, very truly,

CLARENCE CUNNINGHAM,
St. Paul Apts., Seattle.

Memoranda of expense account—Examination of coal lands by A. H. Storrs.

Steamship fare, Katalla & return (C. C.).....	\$90. 00
Steamship fare, Katalla & return (Jap.).....	50. 00
Hotel (Katalla), \$13.50; telegraph, \$6.20.....	19. 70
Launch hire and ferriage.....	34. 50
Supplies for Indians on river.....	20. 25
Groceries and provisions (from Seattle).....	388. 78
Freight and lighterage charges.....	80. 87
Labor %.....	575. 50
Boat hire (Chief John).....	20. 00
	<hr/>
	1, 279. 60

No. 11.]

SCRANTON, PA., Dec. 16, 1907.

Mr. S. W. ECCLES,
Vice-President Northwestern Commercial Co., New York.

DEAR SIR: I am in receipt to-day of a memorandum of expenses incurred by Mr. Clarence Cunningham in connection with my examination of his coal lands in Alaska. His employment of the cook, purchases of provisions, &c., were in pursuance of a telegram from Mr. Yeatman, sent at Mr. Beatty's request, asking that he secure outfit for us and, if possible, go with us. The item of labor, \$575.50, was for the Indians who took us and the supplies up the river to the lands and for the opening of old and new outcrop exposures and assisting in surveys.

Enclosed please find copy of this memo., for which voucher should be drawn in favor of Mr. Clarence Cunningham, Seattle, Wash.

Yours, truly,

A. H. STORRS.

No. 12.]

[File KC-12.

NEW YORK CITY, December 17th, 1907.

Mr. A. CHESTER BEATTY,
Building.

DEAR SIR: I attach hereto memorandum of Mr. Clarence Cunningham's expenses incurred while accompanying Mr. A. H. Storrs during his examination of the coal fields in Alaska.

Would like to have you O. K. same, and I will then arrange for payment.

Yours, truly,

2856 INVESTIGATION INTERIOR DEPT. AND BUREAU OF FORESTRY.

No. 13.]

HEARING IN RE COAL SITUATION IN ALASKA.

WASHINGTON, D. C., March 9, 1909.

MORNING SESSION.

On the 9th day of March, 1909, at request of the Secretary, a hearing was held upon the coal situation in Alaska, at which hearing there were present the First Assistant Secretary, Mr. Barclay, of the law force; Mr. Finney, of the General Land Office; Mr. Falcon Joslin, of Fairbanks, Alaska, one of the members of a committee from the American Mining Congress, appointed for the purpose of presenting the coal situation in Alaska to the Interior Department; Judge James Wickersham, Delegate from Fairbanks, Alaska; and ex-Delegate Thomas Cale, of Fairbanks, Alaska.

Mr. JOSLIN. At a meeting of the committee of the American Mining Congress, held in Seattle in February last, about 20 parties appeared who had or represented coal locations in Alaska, and a very long and careful discussion was held over the subject. It was there declared by all parties interested at that meeting that the coal-land laws, as they now apply to Alaska, simply block the coal lands from development, and that in all localities coal is needed and the coal lands are required, but by reason of the provision of the law the lands can not be developed.

Mr. PIERCE (First Assistant Secretary). Tell us exactly what you mean by being "blocked."

Mr. JOSLIN. Perhaps a brief history of the laws that relate to Alaska might come in here. In 1900, the coal-land law, which had been the law in the States for a great many years, contained in four or five sections of the Revised Statutes—sections 2347 to 2352—was extended to Alaska. That proved ineffectual, because the laws, as provided in the Revised Statutes, permitted the entry of surveyed lands only, and there were no public surveys in Alaska. Then, in order to remedy that defect, in April, 1904, another act relating to coal lands, in Alaska especially, was passed by Congress. That act permitted the location of unsurveyed coal lands by taking possession and marking the boundaries, and it modified the coal-land laws as contained in the sections of the Revised Statutes so as to permit the Alaska coal lands to be located. Under that act of 1904 a large amount of coal lands had been located, and a very large amount of money has been expended in perfecting these entries. I have not had time to get the statistics, but am under the impression that under that act some 30,000 acres of coal land were located in what is known as the Bering River coal field; about ten thousand acres were located in what is known as the Matanuska coal field, and perhaps 2,000 acres located in the Fairbanks district. There were probably some locations at Cape Lisburn and other fields, but I don't know of them. Probably 50,000 acres of coal lands, approximately, were located under the act of 1904; the boundaries were located, notices filed, surveys made by deputy surveyors as provided by the act, and in many cases the purchase price of \$10 an acre was paid and receipts issued. No patents whatever had been issued.

Mr. PIERCE. Mr. Finney, why hadn't the patents been issued?

Mr. FINNEY. Because the entries were being investigated to determine whether or not they were fraudulent.

Mr. JOSLIN. Those entries were all in 160-acre sections or tracts. The language of the act of 1904 follows the language of the Revised Statutes, that no entries shall be made except for the individual benefit of the locator, and not directly or indirectly in behalf of any other person or company. I believe it is the rule in such a location, if it is made with the intention in the breast of the locator to afterwards sell it to somebody else or to some company that would invalidate the location for fraud.

Mr. PIERCE. These entries were suspended on the charge of fraud?

Mr. FINNEY. These thirty-odd; yes.

Mr. PIERCE. Mr. Finney, how long ago was that—the suspension?

Mr. FINNEY. It was in the latter part of 1906, I think, or the early part of 1907.

Mr. PIERCE. Why have they not been cleared?

Mr. FINNEY. For two reasons. They have been under investigation by the field force of the Land Office, and, of course, in Alaska it takes some time to investigate and report. Second, we thought possibly these people might desire to come in under the act passed a year ago (act of May 28, 1908). The attorneys here in Washington rather insisted at the time we were drawing the regulations under the last act that they be given an opportunity to consider the matter and determine whether

ey would try to come in under the provisions of the last act or would take their chances under the original act of 1904.

Mr. JOSLIN. There are no railroads to any coal field in Alaska, and consequently none of this coal land is contiguous to transportation, and therefore the cost and expenses of making it available involve the construction of railroads into those districts.

Mr. PIERCE. Tell me about how far distant these fields are from the railroads—their respective distance.

Mr. JOSLIN. The Bering River field would require about 80 miles of track to the nearest available port; the Matanuska field, 188 miles; the Fairbanks field, about 100 miles to reach the market. The Cape Lisburn and other fields I don't know about; some are probably at or near tidewater, but on the arctic coast and ice-bound ports.

Mr. PIERCE. Are railroads in contemplation to these respective fields?

Mr. JOSLIN. To the Bering River and Matanuska fields railroads are under construction. To the Matanuska, 52 miles are constructed, leaving 136 miles to be built. The Copper River and Northwestern Railroad is building a road to extend toward the interior about 200 miles, and the contracts are let for this construction; 50 miles are completed. This passes within 30 miles of the Bering River field, and the company has made the surveys for a spur to the coal and is ready to build it at once as soon as the coal-land titles can be procured.

Mr. PIERCE. Before we proceed further, please tell us the character of the coal in the respective fields?

Mr. JOSLIN. The Bering River or Katalla field is a high-grade bituminous coal, with a considerable amount of anthracite of the finest quality. The coals in the Matanuska field are of the same character. They contain both soft and hard coals, bituminous and anthracite; those two fields contain coals of equal quality with the best coal of Pennsylvania or Wales—steam and coking and hard coals. Each of those fields contains all the classes of coal, ranging from the finest quality to the ordinary soft coal. The Fairbanks field, or Tanana field, is supposed to be soft coal; it is very little explored as yet. I think the Cape Lisburn coal is bituminous, a good quality soft coal, but it has been very slightly explored. Really, the only fields that are now actively desired to be developed are the Matanuska and the Bering fields; these are high-grade bituminous and anthracite coals, and the Fairbanks field, in the interior, which is soft coal.

Mr. PIERCE. Mr. Joslin, give us all the information that you can on those points. We will give you the manuscript and let you correct it up and add to it.

Mr. CALE. Perhaps if I ask a question it might lead Mr. Joslin to give any information. How far is it from the Katalla fields to tide water?

Mr. JOSLIN. Directly, not over 20 miles; but at that point on the coast they have spent a great deal of money attempting to make a harbor, but have failed and given up after expending about \$2,000,000.

Mr. PIERCE. Who spent it?

Mr. JOSLIN. Two or three different parties.

Mr. CALE. In naming the railroads that are now under construction headed toward the coal fields, do you include the Alaska Central?

Mr. JOSLIN. Yes; that is the Matanuska field. It lays 188 miles from the nearest available port. The Alaska Central Railroad has constructed 52 miles of this distance, and plans to finish as quickly as the money can be obtained. The condition of coal-land titles at present is a very serious obstacle to getting the additional capital.

Mr. PIERCE. Are the people of Alaska getting coal for their consumption out of these respective mines?

Mr. JOSLIN. No.

Mr. PIERCE. Where do they get it?

Mr. JOSLIN. They import it from the State of Washington and from British Columbia. On the interior they use wood at a cost of from \$8 to \$15 a cord.

Mr. PIERCE. Is that the general price throughout Alaska for wood?

Mr. JOSLIN. Throughout the interior of Alaska; yes.

Mr. PIERCE. The reason they don't use this coal is because it isn't available?

Mr. JOSLIN. Yes; there are no roads to it.

Mr. PIERCE. If the coal was available for market, would the railroads be built in it, do you think?

Mr. JOSLIN. Yes. To two of the fields roads have already been started. In one the construction to the coal fields is stopped only because of the difficulty of title to the coal lands. The road to the other field is stopped and in the hands of a receiver and now in process of reorganization. The trouble in getting title to coal lands makes it difficult to get fresh capital to carry out the reorganization and provide for completing the road.

Mr. PIERCE. You want the law and regulations so framed that these coal fields may be opened and the coal made available for use?

Mr. JOSLIN. Yes; and it is greatly needed in Alaska.

Mr. CALE. Do you consider that the coal fields can not be opened up under the present law?

Mr. JOSLIN. Decidedly; exactly; that is why I am here; they can not—

Mr. PIERCE. Just give us as full information as you can.

Mr. JOSLIN (continuing). Because no satisfactory title can be procured to the coal lands.

Mr. PIERCE. I supposed that you would take that subject up separately after you had given us a general résumé of the situation. I would like to find out here how extensive are those coal measures.

Mr. JOSLIN. They are very extensive. The Matanuska and Bering River fields are probably larger than the Pennsylvania fields—I won't say twice as large, but they are much larger in the aggregate than the coal fields of Pennsylvania. The coal field in the Tanana Valley is probably larger than any other coal field in the United States, both in area and in thickness; indeed, I am inclined to believe that the coal field in Tanana Valley is the largest coal field in the world, unless there may be some in China that are greater. The coal in the Tanana has a vertical thickness, as reported by the Geological Survey, of over 200 feet of workable coal.

Mr. PIERCE. How many of these districts contain lignite coal?

Mr. JOSLIN. This one that I have spoken of in Tanana; it is a good quality of lignite.

Mr. PIERCE. Just what is lignite coal—the distinction from other coals?

Mr. JOSLIN. The chief difference is in the amount of fixed carbon. Lignite coals range from 30 to 50 per cent of fixed carbon; bituminous coal ranges from 50 to 70 per cent of fixed carbon; while anthracite coals range from 70 to 90 per cent of fixed carbon.

As I say, some thirty or forty thousand acres—I don't know exactly how many—were located under the act of 1904. Supplies and tools to prospect the locations were packed on men's backs and on pack horses all the way from 20 to 180 miles. It is a difficult country. Trails were cut through the wilderness and cabins built. Deputy mineral surveyors were employed, who surveyed the claims at heavy expense—so much so that I understand that the average cost of development and survey of a single tract of 160 acres amounts to approximately \$5,000. In the Matanuska field probably \$300,000 or \$400,000 have been spent on coal development and over \$4,000,000 on the railroad. In the Katalla field probably \$2,000,000 have been spent in coal development, including the money various companies have spent in endeavoring to get a suitable harbor for that coal. Several million dollars have been spent on railroads intended to reach this field. Then, on November 12, 1906, while this development was proceeding under the act of 1904, when the titles were being perfected under that act, the order of the Secretary was issued withdrawing all coal lands in Alaska from entry. (Copy of the order of November 12, 1906, is annexed hereto as Exhibit A.) The reason and occasion for issuing that order I have not been able to find.

(Reads letter from the Director of the Geological Survey to the Secretary of the Interior, dated November 3, 1906. Copy annexed hereto as Exhibit B.)

The report of the Director of the Survey recommending the withdrawal of coal lands in Alaska, dated November 3, 1906, does not specify the reasons for such withdrawal, except by reference to similar recommendations for withdrawing coal lands in the Western States and Territories. We are still out of touch with the true reasons.

(Secretary reads the order.)

Mr. JOSLIN. Of course I have been expecting to find the real philosophy, the real reasons for the order; but I have never known precisely why the coal lands of Alaska were withdrawn. I supposed it was under the general conservation idea of preserving the resources of the nation for future generations. To a man in Alaska who has endeavored to develop the coal there it seems extremely difficult to understand the reasons, where the coal is so much needed, where it is a pioneer country, and the development of the territory is very largely blocked by the withdrawal; whatever reasons there are ought to be very cogent reasons. If the withdrawal was for the purpose of classifying the coal lands and fixing the price at higher than the minimum price, it would not apply to Alaska at all, because the minimum price in Alaska is fixed at \$10 per acre flat by the act of 1904. (See section 2 of the act of April 28, 1904—33 Stat., 525.) The old laws, as contained in the Revised Statutes, fixed the price at not less than \$10 and \$20 per acre.

If the other reason suggested is correct, that the withdrawal was made for the purpose of investigating the validity of the entries already offered, then it would be confined and should be confined to the entries to which the investigations pertain, and not affect the vast area of unapplied-for lands. If it is based upon a general purpose for the conservation of resources for future generations, then I think some

consideration should be paid to the present generation. I do not know the philosophy the order at all, except the suggestions just made. If it is made for conserving sources for future generations, it will block the progress of the Territory, and the future generations will not arrive, because you can't get them there.

Mr. CALE. I would like to ask Mr. Finney a question which might assist Mr. Joslin in his explanation. Is it not true, also, that there was a question which entered largely into the withdrawal of the Alaska coal lands, which was that there were a great many locations made up there, and it was not only a question as to whether they were legally made or not, but that the interests of various claim owners were so piling over one another as to give rise to a large number of disputes as to ownership—that that was one of the reasons why the department here caused the order to be issued?

Mr. FINNEY. I don't think that furnished any sufficient reason, for the reason that the act of 1904 provides for an adverse proceeding between conflicting owners, similar to the general mining laws, and they could leave their respective interests to the courts.

Mr. PIERCE. Mr. Joslin, are the laws as they now stand sufficient for your relief, provided the withdrawal is set aside?

Mr. JOSLIN. No.

Well, the order of withdrawal of November 12, 1906, had the effect of stopping all new entries, and in some manner caused the proceedings to perfect patents to the entries that had theretofore been made to be held up, so that, although there was a very large amount of claims applied for, none of them have obtained their patents. A large number of them have paid the \$10 per acre. Patents have not yet been issued. When the coal claimants, thus having their titles suspended, sought an act of Congress with a view to enabling these claims to be perfected. Congress passed the act of May 28, 1908, which has proved entirely futile to accomplish the purpose. That act refers only to locations made prior to November 12, 1906, and permits the grouping of a unit of 2,560 acres, or what would be sixteen 160-acre tracts, and provides that they may be patented as one tract. To this extent the act was satisfactory, except that the coal claimants desired a larger unit than 2,560 acres. But the third section of the act declared that there should be no combinations of the groups, which would be in restraint of trade, and provided that if there was any such combination it should act as a forfeiture of the title, and it was provided that this clause should be written in every patent. This forfeiture clause completely destroyed any value of the act. A tract with a forfeiture clause in it would be valueless, and no claimants have applied to group their locations under that act. Under the coal laws, as contained in the revised Statutes, and always until the act of 1908, in the public-land States coal lands could be obtained only in 160-acre tracts. The law not only limited the right to acquire coal land by original location to 160 acres, but it endeavored to go further and prohibit the acquiring by purchase, after location, of a greater quantity than 160 acres.

This intention could be only partially enforced, because after patent issued a purchaser might acquire as many 160-acre tracts as desired. The right of alienation of the land is in coal land, as in all other lands, the principal element of its value.

But the department, carrying out the spirit of the law, prohibited the sale or purchase of a coal entry before patent. And if it was found that any locator had agreed beforehand to sell his location or had made it in behalf of any other person who was to supply the money to pay the Government then the location would be invalid. This is called a fraudulent entry. The language of the "application for patent" under the act of 1904 is as follows: The applicant must swear that—

"I am now in the actual possession of said mines, and make the entry in good faith, for my own benefit, and not directly or indirectly, in whole or in part, in behalf of any other person or persons whomsoever."

Mr. PIERCE. I don't quite catch your point and reasoning, Mr. Joslin.

Mr. JOSLIN. I will explain. As a matter of fact, few if any would care to locate a coal claim if he had not the right to sell it some time, but he must not agree to sell it before he gets it. A unit of 160 acres of coal land is wholly insufficient to justify the expenditure of the capital necessary to open a coal mine. It is physically and financially impossible to open a coal mine on 160 acres of coal in a new country where there are no railroads, because the opening of a coal mine and the building of railroads to it in many of these localities in Alaska will cost a large sum of money, say from one to five million dollars; and no single owner of 160 acres could possibly expend that amount of money for the coal contained in a 160-acre tract.

Mr. PIERCE. Well, do you think the act of May 28, 1908, should be amended, or should stand as it is?

Mr. JOSLIN. I am speaking the sense of the locators themselves; and they declare that the unit of acres expressed in the act of 1908 is too small; that 5,000 acres is as

small a unit of coal land as you can afford to spend this huge sum of money on which is necessary to open the mines and make them successful.

From the fact that the 160-acre unit was too small to develop the coal lands, it resulted of necessity that any parties seeking to enter that land had to consider the possibility of getting a larger tract to justify their expenditures; so that in some cases—I know a man, his wife, his brother, his brother's wife, and probably a dozen members of his family, have made these coal entries, being careful in each case that the individual in whose name the entry was made personally supplied the money to pay the \$10 per acre and the other expense of developing, endeavoring in that way to keep within the letter of the law, whether they were within the spirit of it or not. It is questionable, the intention in their minds was that after they got their patents, to transfer those claims to a single ownership, corporate or individual, and thereby aggregate a sufficient acreage to justify the expenditure for development. So far as I know there has been no secret of that intention—there could not be, because nobody could possibly go in there and develop those claims with 160 acres. As I said, some of the parties have attempted to attain their purpose by using their relatives and members of their families. Other parties, some of whom I know very well, and they are men of fine character and would scorn to do anything in the way of fraud, and are exceedingly careful not to get into the position of being charged with a criminal action in acquiring government lands, have frankly stated that it is their ultimate intention to work these claims in groups. They can not be worked otherwise. They have stated frankly and set it down in writing, as I understand. They have been careful to keep the letter of the law, in that the separate applicants pay their separate money for these 160-acre locations; but it is undoubtedly within their minds and intention, when the titles are perfected and they can do so, to work them together. They have made no secret of that purpose; and if that is a violation of the law, then that law will prevent the development of the lands, because they can not be developed in 160-acre units. The act of 1908 was designed to correct that difficulty and relieve them from any possible fraud by reason of this ultimate intention to work them together. That act is a permissive act, and permits 16 of those 160-acre locations to be united and embraced in one entry and one patent, and would be satisfactory, except for the third and fourth sections of the act, and except further, that 2,560 acres is not large enough in their judgment to justify the expenditure for plant and equipment to open a mine.

Now, then, section 3 of the act provides that if there is any combination in restraint of trade, any selling of the coal by a joint understanding, or anything in the nature of a trust, that it shall not be a criminal offense, but shall result in a forfeiture of the title to the land, and that section must be written in the patent. Now, that strikes them entirely from issuing bonds. Money to develop the coal lands, build docks, hoisting plants, etc., it raised by making a bond issue. That is the usual way, making issue of bonds secured by mortgage upon the coal lands. They can not issue any bond and sell it, because the mortgagee, or the bondholder in that case, would say, "If we lend you money on that kind of title, some time you may commit the offense denounced by that section, and then our title would be forfeited to the Government, and our bonds and mortgages be invalidated;" and it blocks them absolutely from getting capital on that kind of security.

Mr. PIERCE. The only objection, Mr. Joslin, that you bring to that act of May 28, 1908—

Mr. JOSLIN. Is the forfeiture clause.

Mr. PIERCE. As contained in the third and fourth sections. Otherwise you think the act is a good one?

Mr. JOSLIN. Otherwise I think the act is good. It might be a larger unit than 2,560 acres.

At the meeting to which I have referred, and after discussion, they drew up a proposed bill, a copy of which I hand you. [Copy annexed hereto as Exhibit C.]

The principal point in this bill is the proposal to modify the act of 1908 by increasing the unit from 2,560 acres to 5,120 acres—double the amount—and amending section 3 by declaring it to be a misdemeanor and subject to fine and punishment (following the language of the Sherman antitrust law), in place of the forfeiture clause of section 3 of the act of 1908. There was a proviso in section 1 of the bill which was not unanimously agreed to, but it was carried by the majority. That proviso is aimed at this: Some of those groups of entrymen have 5,000 acres or more which they hope to patent in a single claim, and therefore want the unit raised to cover their claims. (Others of the entrymen have all the way from 160 acres to 2,000 or 3,000 acres, or something less than 5,000 acres and their object was in that proviso, that where they had less than 5,000 acres of contiguous lands that they should be enabled to make up the 5,120 from noncontiguous locations, provided they did not lie farther than 20 miles apart from each other. That, as I said, was not unanimous, but was carried by the majority.

Mr. PIERCE. Do you want the Department of the Interior to recommend the passage of this bill?

Mr. JOSLIN. Yes; that is what we want, the department to recommend the passage of the bill. Personally, I was one who did not believe that proviso should go in there.

Mr. PIERCE. That proviso to section 1?

Mr. JOSLIN. That proviso to section 1. Both provisos to section 1 should go in, in my opinion. I was of the minority, however, in that matter. I may add, so, that I have no interest in any coal location anywhere.

Mr. PIERCE. Mr. Joslin, in what capacity do you appear before the Department of the Interior?

Mr. JOSLIN. As a member of the committee of the American Mining Congress.

Mr. CLEMENTS. Of course, this bill does give a further privilege in the first proviso, namely, the right to locate such other land as, with that previously located, will bring it up to 5,000 acres. Now, were it not for the following proviso, there might be some question as to where that should be located; but the second proviso removes any question, by limiting the second location to a radius of 20 miles from the original location.

Mr. JOSLIN. Some of these locators, if the bill is offered without that proviso, will object it before the committees of Congress; and the meeting adopted it largely in the hope of getting harmony, so that there would be no fight on the bill before the committee of Congress when it came up for hearing.

Mr. CALE. Was the committee unanimous as to the 5,000 acres?

Mr. JOSLIN. Yes; they were unanimous.

Mr. CALE. The reason I ask that question is that on the passage of the law of 1908 seemed to be the consensus of opinion that claims could be profitably operated within the 2,560-acre limit.

AFTERNOON SESSION.

At the afternoon session also appeared: Mr. John E. Ballaine, of Seattle, Wash., and Mr. Clements, of the Assistant Attorney-General's office.

Mr. JOSLIN. That is one of the matters for consideration as to what the unit of the coal locations, or rather the unit of the groups (for the location unit will remain 160 acres), should be, and it is purely an arbitrary unit, and must be. It is certain that 5,000 acres is too small a unit to develop. A unit of 5,000 acres is what the meeting favored. They ought to know; they are doing the work and spending the money. That it ought to be is purely arbitrary. Congress, in the act of 1908, fixed it at 2,560; the coal locators themselves want it 5,120 acres. I suppose it will probably be determined by what the department recommends.

Now, then, the proposition is divided really into two parts: One is—the act of 1908 relates to that only—those claims which were located previous to November 12, 1906. The first question that presented itself to me when it was suggested was why, if the act of 1904, which was an invitation by the Government to go there and locate these claims, and they did so, and located them validly, why they should not have their patents?

Mr. PIERCE. Now, Mr. Joslin, I want you to state to us just what you, as representing the committee, want done, so that the particular relief which is required can be called to the attention of the proper authorities.

Mr. JOSLIN. This is the relief desired: First. That in so far as existing locations are concerned, all of which were instituted prior to November 12, 1906, the locators secure those claims investigated and patents issued where the locations are found to be valid, not under the act of 1908, but patented as 160-acre locations under the act of 1904.

Second. A modification of the act of 1908 by the passage of the bill I have presented Exhibit (C), increasing the number of acres that may be grouped to 5,120 and changing section 3 of the act of 1908 so as to make the offense of combinations in restraint of trade penal offenses rather than forfeitures of title.

Third. That the order of November 12, 1906, withdrawing all coal lands from entry in Alaska should be abrogated and the lands opened for location and entry.

I might add this, in conclusion, that the first effort to open the coal lands in Alaska was made in 1900. Now, nearly nine years have elapsed and no entry has been permitted. Twice since that date the law has been amended, aiming to permit the perfection of titles, but failing of its purpose. We are now in this condition: That we are importing coals to the extent of probably a million of dollars a year into Alaska, and have unlimited coal fields which we can not get at.

Mr. PIERCE. Mr. Cale, I want to ask a question of you. Why was the area fixed at 2,560 acres?

Mr. CALE. The only reason, as I understand it, was this: It was generally conceded by all that a separate claim of 160 acres could not be profitably worked. Then the discussion resolved itself to this: How much or how many acres would be necessary to make it profitable? So it seemed to be the consensus of opinion that 2,560 acres was sufficient to open up, develop the property, and work upon a commercial or profitable basis.

Mr. PIERCE. Was that about the number that could be handled with one system of workings?

Mr. CALE. Yes; in order to install the proper machinery necessary to develop a mine, that it would require 2,560 acres.

Mr. PIERCE. From one set of workings and one set of machinery?

Mr. CALE. Yes.

Mr. PIERCE. Could additional acreage be added and development proceed through the same set of machinery and the same workings?

Mr. CALE. Yes; it could be; but the object of limiting it to 2,560 acres was to prevent a monopoly of the coal business in Alaska, and they did not propose under the law to permit any more to be added to that group; it was simply to head off monopoly—to encourage as many independent companies as possible, and they thought that the coal fields could be better developed under a system of that kind, under a law of that character.

Mr. PIERCE. Is there any more that you wish to add?

Mr. CALE. No.

I might ask a question of Mr. Joslin that might be of benefit in relation to the importation of coal into Alaska. It might be well for the committee to know just exactly in what parts of Alaska coal at the present time is being imported.

Mr. JOSLIN. I can answer that roughly; 50,000 tons a year, in rough, are imported to Nome. The Treadwell mine takes about 50,000 tons a year; that is near Juneau. The steamers that ply to and from Alaska use probably fifty to one hundred thousand tons per year, all of which they have to bring up the coast and carry back with them. There are numerous other smelters, so that I should say the annual importations to Alaska would exceed 150,000 tons of coal.

Mr. CALE. Another question: Is it or is it not a fact that the coal used by the steamers plying between Seattle and other shipping ports into Nome and other parts of Alaska is of the most inferior quality?

Mr. JOSLIN. It is mostly of the soft, poor-quality coal and costs from \$9 to \$15 a ton when it reaches Alaska.

Mr. CALE. What would be a reasonable price of the Alaska coal at tide water, assuming railroad facilities?

Mr. JOSLIN. It costs \$2 a ton to mine it; probably \$2 a ton to transport it to tide water—say, \$4—then the profit; the coal should be sold where the railroads enter these districts in the Alaskan ports of Cordova and Seward at \$6 to \$7 per ton—not to exceed those prices.

Mr. PIERCE. What is now paid in Nome for the coal of the same character as the Alaska coal, which you say should be sold for \$6 to \$7 a ton?

Mr. JOSLIN. The coal they pay \$15 a ton for at Nome is a soft coal from Washington and British Columbia and is far below, in fuel value, the Alaska coals of these two fields.

Mr. PIERCE. Then, the situation you have described really compels the consumer to pay an additional amount of about \$9 or \$10 a ton?

Mr. JOSLIN. Yes; considering the inferior quality of coal.

Mr. PIERCE. I wish you would state a little bit more fully, Mr. Joslin, the fuel generally used in the towns of Alaska and its source and cost.

Mr. JOSLIN. There are two absolutely distinct zones in Alaska. Along the coast, all the coast towns, which embraces the towns from Ketchikan to Cape Nome, use this soft coal, which is chiefly brought from British Columbia ports, on which duty is paid, and which, as I say, costs from about \$9 a ton at Ketchikan to \$15 a ton at Nome. All towns in the interior of Alaska use wood fuel, at a cost of \$8 to \$15 per cord, which, in the coal equivalent, would be from \$16 to \$30 a ton. The steamboats on the Yukon River which ply to the interior use wood fuel chiefly; some import fuel oil from California. The greater part is wood fuel. Perhaps I had better tell you what my own experience is. I operate 45 miles of railroad in the interior of Alaska, and we use wood fuel, which costs us \$9 per cord piled along the track. That price will increase rapidly as the wood nearest the track becomes depleted. The stream valleys near mines, some of them, are entirely denuded of timber now within reasonable hauling distance, and within a short time the wood within hauling distance of the railroad will be depleted. Then we will be obliged to have coal, or some other way of operating trains. We also pay on the wood there 50 cents a cord stumpage dues to the Government.

Mr. CLEMENTS. I do not yet understand wherein there is a necessity to increase the amount that may be conveniently worked from 2,560 acres to 5,120 acres. I thought I understood this morning from what you said that it contemplated an independent tramway, or something of the sort, for the purpose of convenient operation; at this afternoon you tell me that you are not interested in coal mining, that you only build railroads that go into the centers, and that your interest is for the purpose of getting freight, coal, to carry; and that seemed to me to take out, in a measure, the dependent operation, except for such small family arrangement that would eventually cooperate with your system when constructed.

Mr. JOSLIN. Well, I am not building any road to any coal. I have considered it. I have considered building 70 miles of road from Fairbanks to a coal field near there, with a view to getting coal for our own use and for the market; and as soon as we begin to consider that, the first thing that we begin to inquire is whether you can get title to the coal land, and whether you can get title to sufficient of it.

Mr. PIERCE. Mr. Joslin appears as the representative of the miners' organization—the American Mining Congress.

Mr. JOHN E. BALLAINE. I think I can answer that question, if you will permit. I can give you the exact information that you seek. Anybody who has money to invest—yourself, or any of these gentlemen, or anybody in New York, or Chicago, or Pittsburg—first considers how much he is going to get in interest per annum. He next considers when he is going to get his principal back. A man who invests in railroads, or in coal, does the same. Now, in investing in coal lands the basis of computation is that the amount of machinery required to produce coal is equivalent to \$1 per ton per annum of coal produced; that is to say, if there is an output of 1,000,000 tons per year in the Matanuska district, or in the Bering River district, or in any other district, the amount of machinery required to be installed for the production of that 1,000,000 tons is generally figured on the basis of cost of a million dollars; that is, the machinery alone for mining. In addition to that they would require an investment of 50 cents per ton for bunkers. That is the basis which would mean an investment of a half a million dollars at the ocean terminus. There is \$1,500,000 invested to start with before a pound of coal is produced. Second, is your fleet of colliers, which you must have to supply Seattle, Portland, San Francisco, Los Angeles, the Hawaiian Islands, the Philippines, and Japan, which would probably run into 2,000,000 or \$3,000,000. So, to produce 1,000,000 tons of coal a year would require an initial investment to start with of not less than \$3,000,000, you see.

Mr. PIERCE. Mr. Ballaine—

Mr. BALLAINE. I have not finished yet. Twenty-five hundred and sixty acres will yield, at what is commonly known as a "foot ton" per acre, 2,816,000 tons of coal per acre. If there is a total of 5 feet, it means five times that amount; if it is 10 feet, it is ten times that amount, or, say, 28,160,000 tons of coal. They would invest \$3,000,000 to mine 28,000,000 tons of coal. That coal would last twenty-eight years at that basis. At the end of the twenty-eight years, the property is all worked out. They have simply received during that time the interest on their investment. When the coal is worked out, their entire plant is worthless, you see. Now, they consider—any investor, whether it is in the Pittsburg district, or any part of Pennsylvania, or the Pacific coast, or Alaska will consider that there must be coal enough in sight to work for fifty years before the investment is safe. That is the universal viewpoint. Now, 2,560 acres does not give that life to the coal field, and an average of 10 feet is as conservative as it is possible to estimate. It gives hope, however, of what is universally considered a safe investment. No group of capitalists in New York, or Pittsburg, or Chicago will put a dollar into coal properties unless they have fifty years of coal in sight to mine.

Mr. CLEMENTS. Do you consider each one of these consolidations an independent operation, which must market its own product, including the marketing in distant markets?

Mr. BALLAINE. That will depend very largely on the way it will have to be worked out. The market of the Pacific coast extends all over that coast. It includes a little here and a little there. The naval stations at San Francisco and other points require coal, and the company that takes care of that market must not only have its mining machinery and its docks, but it must have its colliers—that is a very essential feature of the whole plan.

Mr. CLEMENTS. It seems to me that several might conveniently operate independent mines, but through the same sources.

Mr. BALLAINE. That is exactly what the law prohibits.

Mr. CLEMENTS. No; I don't think the law prohibits that. I hardly think for a moment you gentlemen would contend that we could not market our product through the Pennsylvania Railroad.

Mr. BALLAINE. That is true here in the East. But on the Pacific coast it is different. The marketing is in dribbles, scattered over thousands and thousands of miles. They must have a fleet of colliers to carry the coal.

Mr. CLEMENTS. For each mine?

Mr. BALLAINE. Yes.

Mr. PIERCE. Does not the question, after all, come down to this: Can the owner of a claim limited to 2,560 acres operate that one unit at a profit?

Mr. BALLAINE. You can not raise the money to develop it. You can not raise a dollar to put into it on that basis.

Mr. JOSLIN. There is another reason that Mr. Ballaine has suggested. To illustrate. They say the shape of these groups must not be more than twice as long as it is wide. [Produces sheet showing diagrams of claims.] * * *

Mr. BALLAINE. From the standpoint of national interests alone, leaving out every other consideration, something should be done to make the coal lands in those districts, Matanuska and Bering, available. The navy at the present time is burning about 400,000 tons of coal a year on the Pacific, every pound of which comes from Wales, except a very small amount which is brought around from Pennsylvania. There is no coal now being mined on the Pacific coast at all, which is of a high enough grade for the navy to burn. The consequences are that the navy on the Pacific is entirely dependent on coal which is brought in foreign vessels around the Horn of Mare Island, Seattle, Honolulu, and other places. In the event of war with Japan which is always a possibility, we have not coal enough to-day on the Pacific coast to last the navy sixty days. There are not vessels enough on the Pacific coast available to carry ten days' supply from San Francisco to the Hawaiian Islands. The Government has already located a coaling station at Seward, on Resurrection Bay, 3,300 acres. A commission was sent two years ago to locate such a station; and then rests, without any further action. The coal that the navy must have in times of peace and in times of war will come from those two districts and those two alone. There are no others on the entire Pacific watershed. If we should have war at any time, the coaling station in Alaska would be probably one of the most strategic points in the entire situation. Without coal, of course, a fighting ship is utterly worthless. A basic rendezvous for the fleet would be made near the source of coal supplies. The Government is spending several million dollars a year for foreign coal, at a cost of \$7 to \$14 per ton, when it could get all its own coal in its own territory at practically one-half to two-thirds of that amount, and have an ample supply to draw upon in case of war.

Mr. PIERCE. Is there anything that you wish to say, Judge Wickersham?

Judge WICKERSHAM. I have listened with a good deal of interest to the statements of fact made by these gentlemen, and know them all to be true. From my knowledge of the situation, I know that they have represented the situation with absolute frankness.

Mr. PIERCE. Mr. Joslin, you think it is obvious that your bill needs some corrections? Will you make such a statement in the record?

Mr. JOSLIN. If the withdrawal order of 1906 is abrogated, it will leave the coal lands of Alaska subject to location and entry under the act of 1904. In order to permit such future locations to be grouped, it would be necessary to amend the draft of the bill presented so as to apply, not only to past locations, but to future locations as well.

Mr. PIERCE. Now, Mr. Ballaine, have you anything further?

Mr. BALLAINE. In any bill that is presented there are two essential things before capital can be interested to develop those properties: First, that the area shall be large enough to justify a reasonable expectation of production for fifty years—four or five or six thousand acres, or whatever it might be; second, that absolute title be given to the property. Capital will not go into it with a great many conditions hedged about it, which are likely at any time to wipe out their entire investment. That is the plain fact of the situation.

Mr. PIERCE. Is there anything further you would like to say, gentlemen?

Answer. No.

EXHIBIT A.

THE WHITE HOUSE,
Washington, November 7, 1897.

To the SECRETARY OF THE INTERIOR:

In reference to your letter of the 7th instant, enclosing letter of the Acting Director of the United States Geological Survey of November 3rd, I direct that the proposed action in reference to the coal lands of Alaska be taken. I return the letter of the acting director herewith.

THEODORE ROOSEVELT

[Endorsement.]

DEPARTMENT OF THE INTERIOR,
Nov. 12, 1906.

Respectfully referred to the Com'r of the Gen'l Land Office, who will take the steps necessary to carry the directions of the President into effect and report action to the department.

E. A. HITCHCOCK, *Secretary*.

EXHIBIT "B."

DEPARTMENT OF THE INTERIOR,
UNITED STATES GEOLOGICAL SURVEY,
Washington, D. C., November 3, 1906.

THE HONORABLE THE SECRETARY OF THE INTERIOR,
Washington, D. C.

SIR: In further reference to department letter of Sept. 20, No. 2698-1906, L. & R. iv., in reference to withdrawals of land from coal entry and continuing my reply hereto:

In previous recommendations no reference has been made to coal lands in Alaska. The coal and lignite deposits of that Territory are known to be of commercial value and much attention has been given to their investigation by this survey. The reasons for withdrawing this coal from entry are fully as urgent as in case of that in the Western States and Territories, and I therefore suggest that the matter be brought to the attention of the President. Since the Land Office surveys have not yet been generally extended over Alaska, the coal lands can not be designated by legal subdivision, and therefore recommend that the order suspending coal entries be made to apply to the entire Territory.

I am sending with this a map of Alaska showing the distribution of coal and lignite as far as known, and also other mineral deposits, the economical development of which dependent on a cheap fuel supply.

Very respectfully,
Approved.

H. C. RIZER, *Acting Director*.

E. A. HITCHCOCK, *Secretary*.

[EXHIBIT C.]

AN ACT To encourage the development of coal deposits in the Territory of Alaska.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled:

SECTION 1. That all persons, their heirs or assigns, who have in good faith personally or by an attorney in fact made valid locations of coal land in the Territory of Alaska in their own interest prior to November twelfth, nineteen hundred and six, or in accordance with circular of instructions issued by the Secretary of the Interior May sixteenth, nineteen hundred and seven, may consolidate their said claims or locations including in a single claim, location, or purchase not to exceed five thousand one hundred and twenty acres of contiguous lands, not exceeding in length twice the width of the tract thus consolidated, and for this purpose such persons, their heirs or assigns, may form associations or corporations, who may perfect entry of and acquire title to such lands in accordance with the other provisions of law under which said locations were originally made, within one year from the passage of this act: *Provided*, That such persons, their heirs or assigns, or any association or associations, corporation or corporations, formed by them, who shall have so located a quantity less than five thousand one hundred and twenty acres, may make further entry of and acquire such coal lands located prior to November twelfth, nineteen hundred and six, as shall not, together with the quantity so located, exceed said maximum quantity of five thousand one hundred and twenty acres: *And provided further*, That such additional coal lands shall be situated not more than twenty miles from the coal lands so originally located.

SEC. 2. That the United States shall, at all times, have the preference right to purchase so much of the product of any mine or mines opened upon the lands sold under the provisions of this act as may be necessary for the use of the army and navy, and at such reasonable and remunerative price as may be fixed by the President; but the producers of any coal so purchased who may be dissatisfied with the price thus fixed

shall have the right to prosecute suits against the United States in the Court of Claims for the recovery of any additional sum or sums they may claim as justly due upon such purchase.

SEC. 3. That no person, association, or corporation shall be party to more than one final proof or entry under this act, save and except in the case of the additional further entry and acquisition provided for in section one hereof.

SEC. 4. Every contract or combination in the form of trust or otherwise, or conspiracy in restraint of trade, in the mining or selling of coal acquired under the terms of this act is hereby declared to be illegal. Every person who shall make such contract or engage in any such combination or conspiracy shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both such fine and imprisonment in the discretion of the court.

SEC. 5. That all such acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

DEPARTMENT OF THE INTERIOR,
Washington, November 7, 1906.

The PRESIDENT:

I transmit herewith a copy of a letter of the 3rd instant from the Acting Director of the Geological Survey, with the accompanying map, in which he has recommended that the matter of withdrawing coal lands from entry in the District of Alaska be brought to your attention.

He has stated that the reasons for withdrawing these coal lands from entry are fully as urgent as in the cases of the withdrawals in the Western States and Territories, and I have the honor to request therefore that you inform me of the action which you desire taken on the recommendation of the acting director that the order suspending coal entries be made to apply to the entire District of Alaska.

Very respectfully,

E. A. HITCHCOCK, *Secretary*

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, November 13, 1906

The honorable SECRETARY OF THE INTERIOR.

SIR: I have your reference of November 12th of a letter from the President of November 7th, approving the recommendation of the Acting Director of the Geological Survey of November 3, 1906, that all lands in the District of Alaska be withdrawn from filing or entry under the coal land laws. You direct that the office take the steps necessary to carry the directions of the President into effect and report the action taken.

In accordance therewith the following telegram has this day been sent to the local officers at Juneau:

"By Secretary's order November twelfth, nineteen six, all lands in the District of Alaska were withdrawn from filing and entry under the coal land laws. Properly note your records and be governed accordingly."

Proper notations have been made on the records of this office.

The office wishes to call attention to the wording of the acting director's letter, in part as follows:

"The reasons for withdrawing this coal from entry are fully as urgent as in case of that in the Western States and Territories * * * and I therefore recommend that the order suspending coal entries be made to apply to the entire Territory."

It is to be noted that the withdrawals of lands in the Western States and Territories extended to all forms of entry, while under the above instructions, as this office construes them, the lands in the District of Alaska will only be withdrawn from filing or entry under the coal land laws. The office also has directed that no coal entry or filing now pending for lands in the District of Alaska shall be passed to patent and this order will be maintained until otherwise instructed by the department.

I submit this in duplicate.

Very respectfully,

W. A. RICHARDS, *Commissioner*

INVESTIGATION INTERIOR DEPT. AND BUREAU OF FORESTRY. 2867

[Endorsements.]

GENERAL LAND OFFICE,
November 13, 1906.

COMMISSIONER:

Refers to departmental reference of November 12, 1906, and reports withdrawal of lands in Alaska from entry under the coal land laws.

DEPARTMENT OF THE INTERIOR,
December 18, 1906.

Respectfully returned to the Commissioner of the General Land Office, reference being had to the transmission on this date of data in regard to coal lands in Alaska, and reference being had also to departmental order of the 17th instant withdrawing public lands in Alaska from entry under the coal land law merely.

THOS. RYAN, *First Assistant Secretary*.

DEPARTMENT OF THE INTERIOR,
November 27, 1906.

Respectfully returned to the Commissioner of the General Land Office with the statement that the telegram of November 13, 1906, to the local officers at Juneau, Alaska, should be modified so as to read that all of the public lands in Alaska on which "workable coal is known to occur" are hereby withdrawn from entry, filing, or selection under the public land laws until further ordered by the department.

E. A. HITCHCOCK, *Secretary*.
T. R.

GENERAL LAND OFFICE,
December 1, 1906.

Respectfully referring to the conference with your department this morning and in accordance with the direction of the First Assistant Secretary, I return these papers without action for the purpose of being advised as definitely as possible what lands in Alaska the Geological Survey believes to contain workable coal, with a view of withdrawing such lands from all forms of entry, filing, or selection, and permitting the lands not so defined to be disposed of upon an affirmative showing that the lands do not contain workable coal.

W. A. RICHARDS, *Commissioner*.
G. F. P.

DEPARTMENT OF THE INTERIOR,
Washington, December 17, 1906.

THE COMMISSIONER OF THE GENERAL LAND OFFICE.

SIR: Referring to departmental order of July 26, 1906, and all subsequent orders withdrawing from entry, filing, or selection, under the coal and other land laws, the public lands in certain designated townships in various States and Territories, in which townships the Director of the Geological Survey alleged "workable coal is known to occur," you are advised that all of said orders are hereby modified so as to provide for the withdrawal of "such lands from coal entry merely."

You will make this special and at once wire this modification to the local officers of the various land districts affected thereby.

You are also advised that departmental order of November 12, 1906, is hereby modified and is to be construed as a withdrawal of the public lands in Alaska "from coal entry merely," and you will at once wire the local officers at Juneau accordingly.

Very respectfully,

E. A. HITCHCOCK, *Secretary*.
T. R.

No. 14.]

NEW YORK CITY, April 2, 1909.

Hon. FRANK PIERCE,

First Assistant Secretary of the Interior, Washington, D. C.

MY DEAR SIR: Having read with great interest the account of the hearing held on March 9th upon the coal situation in Alaska, believe you may desire the following brief statement with respect to the railroads constructed and now under construction to serve the interior of Alaska and the Bering River coal fields.

This construction has been undertaken by the Copper River Railway Company and the Copper River & Northwestern Railway Company, which two companies are owned by the same persons, and I am president of both. For brevity, will consider them together for the purposes of this letter, excepting a few details. Attached map shows the railways as proposed and now being constructed.

The Copper River Railway has been constructed from tide water at Cordova to the upper end of Abercrombie Canon, on the Copper River, about 54 miles.

The Copper River & Northwestern Railway Company has been surveyed from its junction with the Copper River Railway (at the lower crossing of the Copper River to the Bering River coal fields. From Katalla toward the coal fields about six miles of roadbed has been graded and tracks laid, right of way cleared for distance of 11 miles—a large amount of excavation and grading done, and at Katalla office buildings, cottages, employees' living quarters, hospital, and railroad yards have been constructed.

On the important construction thus outlined \$5,707,467.00 have been expended up to October 31st, 1908.

In addition, contracts have been entered into for an extension of railroad construction (from Abercrombie Canon) up the Copper River to its junction with the Chitina River, thence along the Chitina River to a point about 150 miles from the upper end of Abercrombie Canon and something over 200 miles from Cordova. The cost of this 150 miles will be at least \$10,000,000.00. The work will be pushed as actively as can be accomplished with money intelligently expended by energetic men.

The line from Katalla to the Bering River coal fields, construction of which was proceeding as already stated, was stopped in 1908 because the coal locators in the field found they could not secure their patents, and it proved altogether uncertain how soon, if at all, these coal locators would be placed in a position enabling them to develop their properties and so furnish coal for transportation by the railroad. It became obviously unwise to construct the railroad to the coal fields until the issuance of patents to coal locators could be definitely assured, since the railroad into that section of the country must depend upon coal for its tonnage. Provision has been made for the money necessary for construction of the road to the coal fields, and we are ready to resume and push the work rapidly to completion just as soon as the coal locators are permitted to work their properties and thus furnish the road with tonnage.

These sixteen millions of dollars (\$16,000,000.00) which these roads have in part expended and as to the remainder are already under contract to expend, together with the several millions more provided for the line to the coal fields, cannot be considered an investment in the ordinary sense of the term. They are amounts set aside in public spirit, combined with business enterprise, for the work of pioneering the great Territory of Alaska, now almost devoid of transportation and consequently of people.

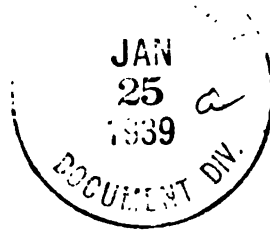
The completion of this railway into the interior along the Copper and Chitina rivers is of far greater importance than generally realized, while the line to the coal fields will be a vital force toward the development of Alaska in furnishing fuel for the railways and providing tonnage for them; also, and of greater public importance still, furnishing fuel for the active development of Alaskan industries and commercial enterprises generally, as well as for the domestic comfort of the people.

The vast sums of money now being expended for the construction of these railways, properties is with the design of serving the greatest possible tributary territory in Alaska and to meet, also, the requirements of our Government.

Cordova is admirably suited for the purpose of tide-water terminus for the railway. The bay is landlocked and spacious. Here even the greatest ships can ride at anchor or lie at wharves in perfect safety. Here we have constructed wharves and provided facilities necessary for handling a large traffic with dispatch and efficiency.

Hawkins Island, directly across the bay, has been wisely reserved by the Government as a coaling station. Its location is ideal and nearer the extensive coal fields than any other possible place. Coal for government uses should be had at this station at a price much lower than at any other port on the Pacific coast.

With respect to facilities for developing the interior of Alaska, the completion of the railway construction will afford a route all the year round to and from tidewater. At present the only means of transportation throughout the greater part of the year is by sleds drawn by animals or men over mountain ranges terrible in winter, making



NO. 28

**HEARINGS BEFORE THE COMMITTEE TO INVESTIGATE THE
INTERIOR DEPARTMENT AND FORESTRY SERVICE**

APRIL 9, 1910

**ROOM 207, SENATE OFFICE BUILDING
WASHINGTON, D. C.**

build our road to these coal fields and serve each and every individual alike who desire to mine coal for commercial purposes. We need this fuel very badly indeed for our operations, and so long as we are investing our millions of dollars in building the railway we feel that the Government should enable people who desire to engage in coal mining to open up their properties and supply the railways, steamships, and citizens with fuel. Am quite sure that the United States Government also needs this fuel for its own requirements on the Pacific coast.

I expect to leave here for Alaska the tenth of June for the purpose of looking over our railway construction, including the branch line to the Bering River coal fields, and if my query is not out of line and any information can be given me before my departure it will be greatly appreciated.

No one who has not visited that wonderful country can appreciate the hardships and disadvantages under which we are constructing our road and the great necessity of not only ourselves but the people in securing cheaper fuel, which is absolutely necessary for the development of that section of the United States.

It is reported in the newspapers that President Taft is likely to visit the Pacific Northwest the coming summer, and I greatly hope this is true, and if he does I trust it may be his pleasure to visit the port of Cordova and while there look over our railway operations; he will then realize the enormous undertakings we have in hand. I do not believe the conditions there are equalled anywhere else in the world.

Hoping you may be able to give me some information, I remain,

Very sincerely, yours,

S. W. E

The CHAIRMAN. The record will also show the following call for the production of documents:

WASHINGTON, April 7, 1910

HON. KNUTE NELSON,
Chairman Joint Investigating Committee.

DEAR SIR: The Attorney-General, in his letter of March 23, 1910, replying to my call for papers, says:

"The only papers that I can find in this department which could come within the description, other than those transmitted to you with my letter of March 16, 1910 are copies of communications submitted to me by the President, the originals of which have been already transmitted by him to you, and which therefore must be in the hands of your committee."

I am not aware that any "originals" have been at any time transmitted by the President to this committee, and in order that the committee and counsel may be definitely advised in the matter, I respectfully request that the Attorney-General be requested to furnish a complete list "of the copies of communications" submitted to him by the President, together with all letters of transmittal from the President to his secretary and replies thereto.

Yours, very truly,

LOUIS D. BRANDEIS

The CHAIRMAN. We will adjourn until to-morrow at 10 o'clock.

(Thereupon, at 5.20 p. m., the committee adjourned until Saturday, April 9, 1910, at 10 o'clock a. m.)

—
SATURDAY APRIL 9, 1910.

JOINT COMMITTEE TO INVESTIGATE THE
INTERIOR DEPARTMENT AND FORESTRY SERVICE,
Washington, D. C., April 9, 1910

The Joint Committee to Investigate the Interior Department and Forestry Service met at 10 a. m. in the anteroom of the committee room.

The CHAIRMAN. At the suggestion of Mr. Vertrees, we will proceed to open and examine the contents of the Glavis box here in the committee room. Mr. Vertrees and Mr. Brandeis are both present. I think Mr. Christensen should be here.

(Mr. Christensen thereupon opened the box and began to take out its contents.)

Mr. GRAHAM. Was the excelsior packing now being removed in the box at that time?

Mr. CHRISTENSEN. No, sir; that was put in by Mr. O'Neill when he packed the box.

Senator FLETCHER. Now, after removing the excelsior packing how does the appearance of the box compare with the appearance before?

Mr. CHRISTENSEN. These burlaps were not in there.

Senator FLETCHER. Take out the burlaps.

The CHAIRMAN. Are those the burlaps that were on the barrels?

Mr. CHRISTENSEN. No, sir; I think this is some that Mr. O'Neill put in there.

Mr. VERTREES. He evidently put them in to keep the excelsior from falling in there.

Senator FLETCHER. Was that brown paper there?

Mr. CHRISTENSEN. The brown paper was not there, either.

Mr. GRAHAM. After the removal of the excelsior and the burlaps and the brown paper, are the contents of the box in the same condition they were when you examined it at the Federal Building in Seattle?

Mr. CHRISTENSEN. No, sir.

Mr. GRAHAM. What difference is there?

Mr. CHRISTENSEN. There is considerable difference. It has been packed in there for packing so that it would not shake around, and the books here that were taken up at that time were scattered around different places, all over the box, these books and papers.

The CHAIRMAN. Were these things in the box, these bundles?

Mr. CHRISTENSEN. Yes, sir.

Mr. VERTREES. Were they tied up?

Mr. CHRISTENSEN. No, sir; they were tied by me for shipping.

Senator PURCELL. Is that bundle the tent that was spoken of?

Mr. CHRISTENSEN. This is the sleeping bag.

The CHAIRMAN. That is what you call the sleeping bag?

Mr. CHRISTENSEN. Yes, sir.

Senator PURCELL. Was it folded like that?

Mr. CHRISTENSEN. Something like that; yes, sir.

Mr. DENBY. Did the contents at that time appear to correspond with its contents now?

Mr. CHRISTENSEN. Somewhat similar, only it is packed more compactly now.

Mr. DENBY. The same things were there?

Mr. CHRISTENSEN. The same things exactly.

Mr. BRANDEIS. Did they have the look of things being thrown in?

Mr. CHRISTENSEN. Yes; to a certain extent. Here are some more papers that we found.

The CHAIRMAN. They were in there?

Mr. CHRISTENSEN. These may be the papers that were found in the barrel. Some of these were found in here and some were found in the barrel.

Senator PURCELL. Which did you open first, the barrel or the box?

Mr. CHRISTENSEN. The box.

The CHAIRMAN. That is the tent [indicating]?

Mr. CHRISTENSEN. Yes, sir; that is the tent.

The CHAIRMAN. Where is the dictionary that you spoke of?

Mr. CHRISTENSEN. Here is one of them.

The CHAIRMAN. Were there two volumes?

Mr. CHRISTENSEN. Yes, sir.

The CHAIRMAN. There was something else in the box?

Mr. CHRISTENSEN. Here is an ax that was also in the box. These papers were here, too. These burlaps evidently were put in here by Mr. O'Neill to save this mirror and other stuff. This is a framed certificate.

The CHAIRMAN. That was in the box?

Mr. CHRISTENSEN. Yes, sir. The frame is broken.

Mr. BRANDEIS. How was that lying in the box?

Mr. CHRISTENSEN. I think it was lying flat.

Senator FLETCHER. Was it broken at the time?

Mr. CHRISTENSEN. Yes, sir.

Mr. BRANDEIS. It is a certificate of George O. Glavis.

Mr. JAMES. It admits George O. Glavis to the practice of law. I suppose it is a license to practice law.

Mr. BRANDEIS. How was the mirror lying?

Mr. CHRISTENSEN. I think I lifted that out before I found the letters. I think that was lying on the end something like that [indicating].

Mr. BRANDEIS. There was nothing around it at that time?

Mr. CHRISTENSEN. No, sir.

Mr. JAMES. Did the things appear as if thrown in or packed?

Mr. CHRISTENSEN. They were pretty loosely thrown in.

Senator FLETCHER. Where did you find the letters?

Mr. CHRISTENSEN. The letters were put in here, I should say [indicating]. The mirror was either lying over there flat or standing up and the letters were approximately right in there.

Mr. GRAHAM. You mean at a point nearly a foot from the end of the box and near the top?

Mr. CHRISTENSEN. Yes, sir.

Mr. JAMES. All these things, then, were under the letters, except those things you say you took out before you came to them?

Mr. CHRISTENSEN. Yes, sir; these things were under the letters. I am not sure where those books there were found, but there were some things under the letters. This book was—I am not sure about that, this one—

Mr. VERTREES. He refers to a blank book.

The CHAIRMAN. What book is that [referring to a small account book]?

Mr. CHRISTENSEN. That relates to his accounts. I suppose that should be considered as an official record; it is a list of his accounts.

Mr. BRANDEIS. It is a memorandum book—checks paid for—

Mr. CHRISTENSEN. The rest is account. Here [removing package] is that ship's log.

Senator FLETCHER. Was that in the bottom of the box?

Mr. CHRISTENSEN. Yes, sir.

Mr. BRANDEIS. Was that in burlap?

Mr. O'NEILL. That was not in burlap; I packed that myself.

Mr. BRANDEIS. Was there anything around that?

Mr. O'NEILL. Nothing whatever.

Mr. BRANDEIS. That is the *Columbus* ship log that Barr told about. He saw it lying there.

Mr. O'NEILL. It was standing against the wall before I started to put anything in.

Mr. BRANDEIS. He said it was the only thing he could recall definitely.

Mr. VERTREES. Mr. Christensen, were there any papers in the bottom of the box?

Mr. CHRISTENSEN. There were papers all over the box, scattered among the books. I kept digging down and kept finding official records that I have listed there, Mr. Chairman.

The CHAIRMAN. This list was in the box, now?

Mr. CHRISTENSEN. Yes; I prepared that list. It was prepared by the stenographers, rather, after it was found, just enumerating what was found in the box and what I considered official records.

Mr. SLEMAN. This was the record he made after the box was found.

Mr. BRANDEIS. Read the heading of it, please, Mr. Christensen.

Mr. CHRISTENSEN. (reading):

List of original letters and telegrams found by G. W. O'Neill, assistant custodian Federal Building, and A. Christensen in a box belonging to L. R. Glavis, among his personal property in room 405, Federal Building, Seattle, Wash., February 8, 1910.

That is the heading of one list.

Senator FLETCHER. Who made the list?

Mr. CHRISTENSEN. This was prepared by Miss Shartell. That is a list of the letters, and the other list is a—

List of papers, letters, books, affidavits, and other government property, found by G. W. O'Neill, assistant custodian Federal Building, and A. Christensen, in a barrel belonging to L. R. Glavis, among his personal belongings, in room 405, Federal Building, Seattle, Wash., February 8, 1910.

That is the list of property found in the barrel. The other list is a—

List of letters, papers, books, and other government property found by G. W. O'Neill and A. Christensen, in a box belonging to L. R. Glavis, among his personal property in room 405, Federal Building, Seattle, Wash., February 8, 1910.

There are 4 pages of that. This was found in this box.

Senator FLETCHER. You mean the list purports to be an inventory of the entire contents of the box?

Mr. CHRISTENSEN. No, sir; that contains just what I brought to the office.

The CHAIRMAN. Will that list go into the record?

Mr. GRAHAM. It is already in.

Mr. CHRISTENSEN. It was introduced in connection with the affidavits yesterday.

Mr. GRAHAM. This is simply a carbon of what was presented yesterday.

Mr. VERTREES. Mr. Christensen, do you know whose handwriting that is [referring to small account book]?

Mr. CHRISTENSEN. That is not Mr. Glavis's handwriting. The pencil writing in the book is in the handwriting of Miss Josephine A. Patten, who was employed there.

Mr. VERTREES. As to the ink, you do not know whose handwriting that is?

Mr. CHRISTENSEN. No, sir; I do not recognize that.

Mr. VERTREES. The memoranda in ink are items that begin July 29 and run down to August 18.

Mr. CHRISTENSEN. I think that is during the year 1908.

Mr. VERTREES. There is no year on it, is there?

Mr. CHRISTENSEN. No, sir; I do not see any.

The CHAIRMAN. Do you want the barrel opened, Mr. Vertrees?

Mr. VERTREES. No, sir; I do not care about that.

The committee thereupon adjourned to the public hearing room, to resume the taking of testimony.

There were present as counsel: Mr. Louis D. Brandeis, representing Mr. Louis R. Glavis; Mr. George Wharton Pepper and Mr. Nathan A. Smyth, representing Mr. Gifford Pinchot; Mr. John J. Vertrees and Mr. Carl Rasch, representing Secretary Ballinger.

The CHAIRMAN. The committee will please come to order. A quorum is present and the examination of the witnesses will proceed.

TESTIMONY OF ALFRED H. BROOKS—Resumed.

Mr. BROOKS. Mr. Chairman, before we go on I would like to have the privilege of making some additional statements in reply to some questions that were asked me yesterday, and to make one correction.

The CHAIRMAN. Very well, you may proceed.

Mr. BROOKS. I was asked what the price of coal was on the west coast, and I said that in San Francisco it was \$8 a ton. I spoke of bunker coal for vessels. I made a misstatement there. The price of bunker coal at San Francisco in 1909 was \$6.26, the average price, and the price of bunker coal in southern California was \$8. I have here a table showing the average price of bunker coal for the past five years on the west coast. If it is desirable, it may be included in the record.

The CHAIRMAN. If there is no objection the table will be admitted. (The table referred to is as follows:)

Quantities and average prices of bunker coal supplied to vessels at Pacific coast ports

[Great tons.]

	1905.		1906.		1907.		1908.		1909.
	Quantity.	Average price.	Quantity.	Average price.	Quantity.	Average price.	Quantity.	Average price.	Quantity.
Humboldt, Cal.....	742	\$8.00	790	\$7.79	890	\$7.80	690	\$8.00	610
Los Angeles, Cal.....	186	9.86			201	13.02			
San Diego, Cal.....	3,511	7.25	4,976	7.25	5,059	6.90	5,939	8.59	4,080
San Francisco, Cal.....	111,871	5.75	273,960	6.04	232,856	7.04	190,274	6.47	157,622
Oregon, Oreg.....									131
Southern, Oreg.....	17,664	2.03	8,577	2.14	11,804	3.00	14,188	3.12	13,664
Willamette, Oreg.....	5,984	5.29	4,270	5.42	6,040	6.06	5,123	6.92	2,373
Puget Sound, Wash.....	355,542	3.01	492,246	3.00	661,662	3.70	399,809	4.00	365,094
Alaska.....	14,830	10.88	14,166	11.33	17,719	12.15	16,127	11.67	13,461
Hawaii.....							5,115	7.80	5,755
Total.....	510,330	4.21	798,985	4.23	937,919	4.73	563,325	6.13	564,047

Mr. GRAHAM. How is the average arrived at? Is it per day or per ton?

Mr. BROOKS. It is per ton. I was asked how long the coal resources the known coal resources of the United States, would last at the present rate of consumption. I find that at the rate of consumption in 1908 the known coal resources of the United States would last 4.9 years. I was asked a number of questions in regard to coal con-

sumption on the west coast. I have here a statement of the consumption of coke, the consumption of coal in California, the consumption of coal in Alaska, the consumption of coal in Washington and Oregon for the past ten years. I do not know whether it is desirable to include these in the record or not.

The CHAIRMAN. I think we had better have those tables printed. (The tables referred to are as follows:)

Consumption of coke, Pacific States and Territories.

[Short tons.]

Year.	Importation of coke from British Columbia, United Kingdom, and Belgium.					Total coke imported.	Coke manufactured, Washington coal.	Total coke consumed on Pacific coast.
	California.	Oregon.	Washington.	Hawaii.	Alaska.			
1898.....	40,011	442	13	.....	.....	40,466	30,197	70,663
1899.....	53,075	1,006	1,176	.....	.....	55,257	33,372	88,629
1900.....	39,968	440	1,615	.....	.....	42,023	33,387	75,410
1901.....	36,596	290	6,209	56	15	43,166	49,197	92,363
1902.....	58,547	1,416	25,062	668	53	85,746	40,305	126,051
1903.....	78,337	1,749	9,324	204	22	89,636	45,623	135,259
1904.....	69,520	4,309	76	146	49	74,100	45,432	119,532
1905.....	81,624	5,484	277	672	1	88,058	53,137	141,195
1906.....	77,207	2,768	221	392	8,543	230,326	45,642	275,968
1907.....	66,933	2,772	972	446	3,314	74,437	52,028	126,465
1908.....	80,874	4,712	1,590	1,080	31	88,287	38,889	127,176
Total.....	682,692	25,388	46,535	3,664	12,028	911,502	467,209	1,378,711

Coal consumption, California, and its source.

Year.	California.	Oregon (estimated).	Washington.	Rocky Mountains (estimated).	Eastern States. ^a	Total domestic.
1899.....	160,615	70,000	627,450	320,000	38,951	1,217,016
1900.....	171,708	43,000	668,642	280,000	17,319	1,180,669
1901.....	151,079	48,000	674,391	230,000	27,370	1,130,840
1902.....	84,984	38,000	374,595	280,000	24,133	801,712
1903.....	104,673	61,000	384,645	370,000	13,262	933,580
1904.....	78,888	71,000	321,376	300,000	29,055	800,319
1905.....	77,050	79,000	166,445	310,000	11,663	644,158
1906.....	25,290	42,000	110,670	340,000	11,455	529,415
1907.....	13,850	26,000	87,346	400,000	83,883	611,179
1908.....	18,755	24,000	29,426	350,000	171,875	594,056
Total.....	886,992	502,000	3,444,986	3,180,000	428,966	8,442,944

Year.	British Columbia.	Australia.	United Kingdom.	Japan.	Total foreign.	Total.	Per cent of domestic.
1899.....	623,133	139,333	93,263	8,458	864,187	2,081,203	58
1900.....	766,917	178,563	54,099	11,398	1,010,977	2,191,646	54
1901.....	710,830	175,969	52,270	7,852	946,411	2,077,251	54
1902.....	591,732	197,328	99,221	19,378	907,659	1,709,371	41
1903.....	289,890	276,186	65,075	15,350	646,501	1,580,081	59
1904.....	335,137	148,409	66,330	88,213	638,089	1,438,408	56
1905.....	348,515	85,031	65,087	54,810	553,443	1,197,601	54
1906.....	311,099	72,638	37,215	21,546	442,498	971,913	54
1907.....	205,956	387,740	18,582	83,405	695,683	1,306,862	47
1908.....	167,415	228,174	15,110	21,285	431,984	1,026,040	58
Total.....	350,124	1,899,361	566,252	331,695	7,137,432	15,580,376	54

^a Chiefly blacksmith and anthracite coal.

Coal consumption of Alaska (by short tons).

Year.	Imported from States, chiefly from Wash- ington.		Alaska, chiefly subbitu- minous and lig- nites.	Total domestic.	Total for- eign coal, chiefly bitumi- nous— British Columbia.	Total coal con- sumed.	Percentage of domestic coal.
	Bitumi- nous.	Anthra- cite.					
1899.....	10,000		1,200	11,200	50,120	61,320	15.2
1900.....	15,048		1,200	16,248	56,623	72,871	22.2
1901.....	24,000		1,300	25,300	77,674	102,974	24.6
1902.....	40,000		2,212	42,212	68,363	110,575	28.2
1903.....	64,625	1	1,447	66,073	60,605	126,678	32.4
1904.....	36,689		1,684	38,383	76,815	115,198	33.2
1905.....	67,707	6	3,774	71,487	72,567	144,054	49.6
1906.....	68,960	533	5,541	75,034	47,590	122,624	61.2
1907.....	45,130	1,116	10,139	56,385	88,596	144,981	38.9
1908.....	23,402	491	3,107	27,000	72,831	99,831	27.0
Total.....	394,561	2,147	31,614	429,322	671,784	1,101,106	38.9

* Estimated.

* Fiscal year ending June 30, 1907.

* Fiscal year ending June 30, 1908.

Estimated coal consumption of Washington and Oregon, and source of coal (by short tons)

Year.	Domestic.		Foreign.		Total do- mestic.	Total for- eign.	Grand total.	Perce- ntage of domestic.
	Washing- ton and Oregon fields.	Other domestic fields.	Im- ported at Pacific coast ports.	Esti- mated con- sump- tion of Canadian coal in eastern Wash- ington.				
1899.....	1,390,474	4,600	19,477	21,000	1,392,474	40,477	1,432,951	
1900.....	1,766,063	500	20,976	12,000	1,766,563	32,976	1,799,539	
1901.....	1,896,245	200	16,744	16,000	1,896,445	32,744	1,929,189	
1902.....	2,286,766	300	39,116	62,000	2,287,066	101,116	2,388,182	
1903.....	2,747,272	300	41,010	39,000	2,747,572	80,010	2,827,582	
1904.....	2,803,937	200	51,170	73,000	2,804,137	124,170	2,928,307	
1905.....	2,640,755	200	33,433	69,000	2,640,955	102,433	2,743,388	
1906.....	3,112,904	300	69,685	113,000	3,113,204	182,685	3,295,889	
1907.....	3,569,774	300	99,245	109,000	3,570,075	208,245	3,778,319	
1908.....	3,024,256	300	157,704	164,000	3,024,556	321,704	3,346,260	
Total..	25,238,466	4,600	548,560	678,000	25,243,066	1,226,560	26,469,626	

Mr. VERTREES. I would like, if it is agreeable, as those tables have been introduced, to have the witness give some of the totals without going into the details.

Mr. BROOKS. As the tables show, the consumption of coke on the west coast in 1908 was 127,000 tons; in 1898, ten years ago, it was 70,000 tons; pretty nearly doubled in that time. The consumption of coal in Alaska has varied from 60,000 to 144,000 tons during the past ten years. The consumption fell off from 1907 to 1908 from 144,000 tons to 99,000 tons. I should say that in Alaska only 27 per cent of the coal used is domestic coal. The rest is foreign coal. The consumption of coal in Washington and Oregon in 1899 was 1,432,000 tons, as compared with 3,346,000 tons in 1908. Of that about 90 per cent is domestic coal. In California the coal consumption has been falling off because of the oil production, which has taken

its place. In 1899 it was some 2,000,000 tons; in 1908 it was 1,000,000 tons. Of this tonnage only 58 per cent was domestic; the rest was foreign.

I was also asked about the relative area of the English coal fields as compared with those of the United States. We have in the United States, according to the most recent estimates, an area of 509,000 square miles of coal fields. In England—that is, in the United Kingdom—there are 12,000 square miles of coal fields.

Mr. GRAHAM. To be worked out?

Mr. BROOKS. Yes, sir; that is the actual coal fields. Of course, as far as conservation is concerned, that includes both the unworked and the worked fields.

Mr. GRAHAM. Have you figures showing how much of that is worked and how much is not worked out?

Mr. BROOKS. I can express that in tonnage; that is, of the total tonnage about four-tenths of 1 per cent of our coal has been worked out.

Mr. GRAHAM. I meant the British coal.

Mr. BROOKS. And in England it is somewhat less than that; a smaller percentage of the tonnage has been worked out. I would not want to give the exact figures as to that.

Mr. GRAHAM. Do I understand you to mean that less than four-tenths of 1 per cent of the coal in Great Britain has been worked out?

Mr. BROOKS. Yes, sir.

Mr. GRAHAM. That 9.6 per cent of it—

Mr. BROOKS. No; four-tenths of 1 per cent—of course, 99.6—

Mr. GRAHAM. Ninety-nine and six-tenths remain in the ground?

Mr. BROOKS. Yes, sir; remain in the ground; that is, approximately. I have not got the exact figures.

Senator SUTHERLAND. Is that in England or the United States?

Mr. BROOKS. That is in England. They have 12,000 square miles of coal. It might be of interest to state that we have about 60 to 70 per cent of the known coal of the world.

Mr. McCALL. Does that mean that less than 100 square miles of the English coal has been worked out—if they have 12,000 square miles and only four-tenths of 1 per cent worked out?

Mr. BROOKS. In mining coal, of course; you start with the most accessible seam, and in England the tonnage per acre is very large indeed, so that it will be impossible, I think, to work out the exhaustion per acre, because they would start on the most accessible seam and go down and work there. They are working now, I think, to a depth of, perhaps, 3,000 feet or more.

Mr. MADISON. Can you give us any idea as to the percentage of the accessible coal, the available coal, that has been worked out in England?

Mr. BROOKS. The figures I am giving you include the coal which was regarded as available by the royal commission which investigated that subject about four or five years ago.

Mr. MADISON. You want us to understand that only four-tenths of 1 per cent of the available coal of Great Britain has been worked out?

Mr. BROOKS. Of course you understand they are working coal beds there much thinner than we are. They include all that available coal, I think, everything down to 12 inches, whereas in our coal estimates, I think, they only included beds of 2 feet and over. I am not quite certain as to that—it is 18 inches or 2 feet.

Mr. MADISON. Why should they work beds of only 12 inches if, as a matter of fact, there is less than one-tenth of 1 per cent of the available coal worked out?

Mr. BROOKS. I do not say that they are working beds to 12 inches. What I said was that they included in their estimates everything up to 12 inches, which they regarded as would be available to a depth of 4,000 feet. In our tonnage estimate we only included, I think, a depth of 3,000 feet, and of about 15 inches or 2 feet. I do not recall it exactly.

Mr. GRAHAM. Could you tell us what proportion of the English or British coal is in veins of 2½ feet or less in thickness?

Mr. BROOKS. No, sir; I can not give you those figures. In fact, I think the royal commission report did not separate them, and I have not the figures at hand in any event.

Mr. MADISON. Where would we find the royal commission report?

Mr. BROOKS. It is published in the parliamentary papers of England. There are two; there is one published in 1872 or 1873 and one published in 1907.

Mr. MADISON. Can you give us an exact citation and put it in the record as to the authority you have for the statement you have made with regard to both the British and American coal?

Mr. BROOKS. Yes, sir; certainly.

Mr. MADISON. I wish you would.

Senator SUTHERLAND. If I understood you correctly, you said after this investigation of the royal commission that the English policy with reference to broadening its markets was changed?

Mr. BROOKS. They had at that time an export tax of 1 shilling a ton, which, I think, was put on at the time of the Boer war, and I think one of the purposes of the investigation of the coal supply was to determine whether they were justified in removing that export tax; and after going into the matter carefully they took off the export tax, and, of course, in that way it increased their exports very materially. I think, my recollection is, that about 20 per cent of the coal production of England is exported.

Mr. GRAHAM. Could you give us any information as to the probable cost of marketing coal out of a vein 1 foot thick at a depth of 4,000 feet, or any depth?

Mr. BROOKS. I do not believe anybody could give that. I am not familiar enough with the process of coal mining to say.

Mr. GRAHAM. Are you sufficiently familiar to express an opinion whether or not it would be practicable to mine such coal, except when coal had become almost as rare as a precious metal?

Mr. BROOKS. I would only say as to that that the mere fact that this royal commission, which was made up of mining engineers and practical coal men, included coal beds down to a thickness of 12 inches, would indicate that they regarded them as of value. Moreover, they are mining coal to-day at 14 inches. I can not say as to the depth which they are mining 14-inch coals, but I suppose no one would say that at the maximum depth of 4,000 feet that you could to-day mine coal which was only 12 inches thick. So that there is a ratio there between depth and thickness.

Mr. JAMES. What is the greatest depth at which they mine coal in this country?

Mr. BROOKS. I think it is about 2,000 feet.

Mr. GRAHAM. The difference in the cost of producing the coal in the shallow mines and the deep mines, would be measured simply by the sinking of the shaft, would it?

Mr. BROOKS. And the hoisting; and, of course, when you go to a certain depth you have the increased cost due to the increased temperature, which increases the cost of your labor.

Mr. GRAHAM. Have you any figures showing the coal with reference to the world's supply?

Mr. BROOKS. I have made a rough table of that, but I do not attach much importance to it, because I have just started on the investigation, but it was on the basis of that table by which I estimated that we own from 60 to possibly 70 per cent of the world's coal supply.

Mr. GRAHAM. So far as known?

Mr. BROOKS. Yes, sir; that is taking a rather more conservative estimate of the coal resources of China than has been done in the past. In the past it has been said that China had very large coal resources, but more recent investigations indicate that they may be at fault. So I have taken a more conservative estimate for China.

Senator SUTHERLAND. I understood you to say that while we had 60 or 70 per cent of the world's supply in this country that Great Britain had only 1 or 2 per cent.

Mr. BROOKS. I have not figured that out, but the total of Europe—the area is about 4 per cent and the tonnage about $6\frac{1}{2}$ per cent.

Senator SUTHERLAND. Now, can you give us any idea as to the relative tonnage extracted in Great Britain as compared with this country?

Mr. BROOKS. The percentage; well, I think it is about the ratio of 6 to 10, ours being 6 and Great Britain 10.

Senator SUTHERLAND. That is, for every 6 tons we extract Great Britain is extracting 10 tons?

Mr. BROOKS. Yes, sir; has extracted.

Senator SUTHERLAND. That has been the case?

Mr. BROOKS. Yes, sir. Of course, our production now, I think, is something like nearly double that of Great Britain, but I can not recall the exact figures.

Senator SUTHERLAND. Notwithstanding the fact that Great Britain has been working these mines and extracting the coal for hundreds of years, it has only succeeded in using about four-tenths of 1 per cent of the entire supply?

Mr. BROOKS. That is true.

Mr. MADISON. Give us now the citation.

Mr. BROOKS. I can not give you the citation here as to that.

Mr. MADISON. I do not know whether you understood me or not.

Mr. BROOKS. I thought you wanted me to get the information for you.

Mr. MADISON. I wanted you to give me the citation where we can find these facts which you are stating with regard to the coal supply of this country and Great Britain?

Mr. BROOKS. As to our coal supply, the resources are published in bulletins of our office. That gives the data in regard to the coal supply of the United States and Alaska.

Mr. DENBY. For what year—what is the reference?

Mr. BROOKS. It is Bulletin 394, I think. It is the final report of the royal commissioners on coal supplies, published in London, in 1905. It is a parliamentary blue book.

Mr. MADISON. I suppose, we can get it at the Congressional Library?

Mr. BROOKS. Yes, sir.

Mr. GRAHAM. What do you know about the coal supply in Australia? How extensive is it?

Mr. BROOKS. There are very extensive coal fields in eastern Australia. I have a statement here on that subject. In New South Wales there is an area which has been estimated at some 25,000 square miles and it has a great deal of coal. I have not the figures here as to the tonnage, but it is—

Mr. JAMES. Has the price of coal in England increased or decreased in the last twenty years?

Mr. BROOKS. It has been going up steadily.

Mr. JAMES. It has been going up notwithstanding they have not used but four-tenths of 1 per cent?

Mr. BROOKS. It has been going up; yes, sir.

Mr. JAMES. What causes that?

Mr. BROOKS. The deeper mining, I presume, and not only that but the increased wages. Wages have been increasing in England to the coal miners.

Mr. GRAHAM. Some of those coal fields there include land there that is covered by the ocean?

Mr. BROOKS. Yes, sir; they work underneath the ocean. Of course the hoisting in coal mining and at a depth is expensive because not only of the hoisting but the pumping.

Mr. MADISON. As a matter of fact—and I ask you purely for information—is it not true that the coal lying near the surface in England, reasonably near the surface, has almost entirely been exhausted and that there is a serious problem confronting Great Britain in the matter of securing the coal which lies at great depths; that this, at least applies to this fact that the expense of getting the coal in the deeper mines is very great.

Mr. BROOKS. Well, I am not familiar enough with the reports to make a definite statement. I know that, of course, they are mining at great depth in England; that is, deeper than we are, and there is still considerable coal comparatively near the surface. I talked with a man recently who told me he had coal lands there which were only a few hundred feet deep that had not been mined at all, and he said it was a good quality of coal.

Mr. MADISON. Is it not generally regarded as one of the economic questions to be faced in Great Britain in the future; that is, this question of the coal supply, and that they really regard it at the present time, notwithstanding they have only exhausted four-tenths of 1 per cent—taking your figures to be true—as a very serious economic question?

Mr. BROOKS. I think that is borne out by the facts that they have had two commissions within thirty years to go into that subject exhaustively, and of course the future of Great Britain as a manufacturing center depends, and her export trade depends, on her coal. If she did not have the coal, she could not manufacture, and if she was not exporting coal, she probably could not keep up her shipping.

Mr. MADISON. And have they not, as a matter of fact, come to the conclusion that they now face a serious question, a serious situation mean, on account of the fact that they must now go to such great depths for their coal, and that the difficulty in getting it and the cost of it when obtained is such that they feel that the economic situation is very serious? Now, I just ask you if that is not true?

Mr. BROOKS. I judge so, as I said before, from the fact that they repealed their export tax on coal. Now, if they had thought there was any reason for holding their coal and keeping it at home they probably would not have repealed that export tax. That export tax undoubtedly decreased the exportation of coal, and if they thought that there was not enough for their own use for the immediate future, that coal was going to increase in price very much, it seems to me that they would not have repealed that tax.

Mr. MADISON. That was a war tax, was it not?

Mr. BROOKS. Yes, sir.

Mr. MADISON. It was an emergency tax?

Mr. BROOKS. At the same time they evidently had in mind, then, this very question, according to the evidence that was given before the royal commission.

Mr. DENBY. Did they discuss that specific point in their report?

Mr. BROOKS. Yes, sir; to a certain extent; that is, it is included in the evidence—I think in the summary. They did not dwell on that very much. As I stated yesterday, they appeared to have been very chary—that is, the second commission—about making any statements. The first commission of 1872 gave definite figures of, I think, from two to perhaps seven hundred years as the time which the coal would last.

Mr. MADISON. From two hundred to seven hundred years?

Mr. BROOKS. I think that is it, as I recall it, but the second commission discussed all of the evidence and finally said that they could not decide how long the coal would last.

Mr. MADISON. Did they give a guess at it?

Mr. BROOKS. No, sir.

Mr. MADISON. They did not make any estimate?

Mr. BROOKS. They went into an elaborate argument as to probable population, and they said something about per capita consumption, but they were apparently a little bit doubtful about the matter, because the previous commission had made an estimate as to what the per capita consumption would be, and it was found that they had underestimated it; that the per capita consumption was less in 1903 than it would have been estimated for by the commission of 1873; it looked as if the per capita consumption might be on the decline, which would of course have upset most of their figures.

Mr. GRAHAM. Might it not be due rather to greater economy in the use of coal?

Mr. BROOKS. That would amount to the same thing, of course; the per capita consumption, whether it is due to economy or cost of the coal, has the tendency to conserve the coal supply.

Mr. GRAHAM. Will you please give us a brief summary of the available coal supply of the countries bordering on the Pacific?

Mr. BROOKS. We have in Japan an area which from the best figures I could get is about 5,000 square miles of coal. It is mostly a low-grade bituminous coal with some lignite. They have a little anthracite, but not very much. The production is small in Japan. A good part of it, though, is exported.

Senator SUTHERLAND. Do they use it for steaming?

Mr. BROOKS. Yes, sir.

Mr. DENBY. Do they import any coal from China?

Mr. BROOKS. Apparently not. I can not speak definitely on that subject. I—

Mr. MADISON. You feel—

Mr. McCALL. Suppose you let him finish his answer, Mr. Madison.

Mr. MADISON. I beg pardon.

Mr. BROOKS. They have in China a very extensive coal field, but how extensive nobody knows.

Mr. GRAHAM. How far from the coast are they?

Mr. BROOKS. Some of them are right on the coast. The mines that have been opened, I think, show a production from China, possibly, of from 4,000,000 to 10,000,000 tons—no one knows exactly. That is for mines that are right on the coast. Then there are mines in the interior which are producing a little bit, apparently for local use; also possibly sending it down to the coast. The data is very incomplete, but the coal fields are very extensive and the coal is a very high grade. The most recent estimate that I have seen compared the quantity of coal to that that was included in the Appalachian coal fields—that is the eastern coal fields—but that is far more conservative than the original estimates, which were made some thirty or thirty-five years ago.

Mr. GRAHAM. You have now accounted for Japan and China?

Mr. BROOKS. Yes, sir. Then in Australia the most important coal fields are those of New South Wales, which are very extensive. The rest of Australia has not very much coal in it, as far as we know.

Mr. GRAHAM. What is the grade or character of the coal in New South Wales?

Mr. BROOKS. It is bituminous coal and not a very high grade. It is comparable perhaps to or a little better than Washington coal, and not quite as good as the British Columbia or Vancouver Island coal. It is between the two, at least the coal that is being mined. There are very extensive lignite deposits in Australia about which very little information is available. There is considerable coal in New Zealand. New Zealand is exporting some coal, but I have little idea of the quantity of it. I think that covers practically all of the coal that we know of on the Pacific seaboard with the exception that there is some coal in Siberia, probably of subbituminous or lignitic character.

Mr. VERTREES. What about recent discoveries in Mexico?

Mr. BROOKS. There is no coal in Mexico.

Mr. VERTREES. I mean old Mexico.

Mr. BROOKS. Yes; I have not, as a matter of fact gone into the matter. I have tried to find out whether there was any good coal on the Pacific slope of Mexico, but I do not really know. There is some coal in South America, but the quantity appears to be limited. I think that Chile and Peru perhaps have the best coal, and some fair good quality, but most of the coal consumed in South America is

imported from England, a little sent from the United States, and some from Australia.

Mr. GRAHAM. So far as known there is scarcely any coal in the countries bordering on the Indian Ocean.

Mr. BROOKS. India has a large supply of coal.

Mr. GRAHAM. Is it interior or coastwise?

Mr. BROOKS. I can not speak definitely. I have seen only the summary statement. I know their coal production amounts to a good deal, and I think I have here the area. The royal commission in England estimated the area at 35,000 miles—square miles—of coal, which is larger than that of the estimated area of Australia.

Mr. GRAHAM. Is that not mostly interiorly, mostly toward the inland country?

Mr. BROOKS. I can not speak definitely as to that. I have not looked up the location of it.

Mr. DENBY. Have they discovered much coal in the Philippines?

Mr. BROOKS. There is some coal, but rather of a poor grade. There is some coal mining, but it does not compare with the bituminous. It is average bituminous—it is subbituminous and lignitic in character.

Mr. MADISON. I understand you to say that the accessible coal in this country and Alaska is sufficient to furnish this country with all its needs at the present rate of consumption for a period of approximately five thousand years.

Mr. BROOKS. I made that statement in reply to a question as to how long our coal would last at the present rate of consumption.

Mr. MADISON. That is, accessible coal?

Mr. BROOKS. That is accessible; yes, sir.

Mr. MADISON. Then you mean to have us draw the conclusion from that—and if you do not I want you to say so, but of necessity that the natural conclusion—from the bald statement that the conservation of coal in this country is at the present time a pure myth; that we are not at all at the present time face to face with it, nor could we think of it for two or three thousand years at the present rate of consumption. Now, do you want us to understand that, and that you do regard the question of the conservation of the coal in this country as not at all a serious question?

Mr. BROOKS. There are two ways of getting at the coal; estimating the coal consumption of the future. One is to take the present consumption, and the other is take the increase in consumption. The present rate of increase in consumption that has been figured out—that our coal would be exhausted in the matter of a century or two; do not remember the exact figures. Now, somewhere between those two extremes lies the truth—that is, between this five thousand year period and this two hundred period; somewhere between those two. Perhaps it is less than two hundred. I would say that it is one hundred.

Mr. MADISON. You have figured purely on the present rate of consumption?

Mr. BROOKS. I brought that in as a reply to a question. It was not a statement.

Mr. MADISON. Whose question was it?

Senator SUTHERLAND. I put the question.

Mr. MADISON. Now, then, figuring out the present rate of increase in consumption, then how long would you say before the accessible coal would be exhausted—how long would it take to exhaust it?

Mr. GRAHAM. Do you include in that question the present basis of population?

Mr. MADISON. I am letting him furnish his own basis there.

Mr. GRAHAM. Give the specific data.

Mr. BROOKS. I am speaking——

Mr. MADISON. Taking the present rate of increase in consumption, that is the idea, and that is determined, as I understand from a number of things, among others the increase in population, is it not?

Mr. BROOKS. It is simply taking a curve of increase in consumption. That includes, of course, the factor of population, as it does the factor of increase in industries.

Mr. MADISON. Now, then, taking into consideration the present rate of increase in consumption, how long would it take to exhaust the available supply of coal?

Mr. BROOKS. I have not made those figures myself; of course they have been published in our report. It is approximately one hundred or one hundred and fifty years; I can not recall exactly.

Mr. GRAHAM. One hundred to one hundred and fifty years?

Mr. BROOKS. I think that is the approximate amount.

Mr. MADISON. Now, then, let me understand you. There can not be any question but what we are up against the question of conservation of coal resources; if that is true, and there is no disguising the fact, that is just what we are here for—for the purpose of determining now this phase of this case that is now presented, and that is the purpose of your testimony, as I understand it. Now, then, you say to us that taking into consideration the present increase in the rate of consumption, and taking the coal supply as you understand it to exist, it would be exhausted in about a hundred and fifty or two hundred years?

Mr. BROOKS. The figures are approximately that; I haven't them in mind.

Mr. MADISON. That is all.

Senator SUTHERLAND. If you take that as a basis for your computation—that is, if you carry on the present rate of consumption—you would soon reach a point where your figures would indicate that we were using in the United States more coal than could possibly be consumed in the entire world.

Mr. BROOKS. I presume you would. I am not familiar enough with those tables to make a statement as to that.

Senator SUTHERLAND. If you kept on doubling up the consumption of coal, as indicated by the present rate of consumption, of course you would soon reach a point where your figures would indicate more than possibly could be consumed in the United States.

Mr. BROOKS. As a matter of fact, that leaves out—to make that involved statement leaves out one very important element indeed, and that is that we are improving our methods of consumption, the technology of the use of coal by which we get more out of a ton of coal than we ever did before. That is an unknown factor in this, but, of course, it is a very important one, so that that should also be taken

into account. Moreover, there are other sources of energy besides the coal.

Senator SUTHERLAND. What I was going to say was that we are all the time developing and making use of substitutes for coal, as, for instance, the water power.

Mr. BROOKS. Yes, sir.

Senator SUTHERLAND. Making experiments in the direction of utilizing the energy of the tides, are we not?

Mr. BROOKS. Yes, sir.

Senator SUTHERLAND. And making some headway in that direction?

Mr. BROOKS. I do not know; I am not familiar with that. I presume so.

Senator SUTHERLAND. I understand that there are some experiments of that kind that are proving fairly successful; at any rate, so far as the development along that line extends—

Mr. BROOKS. May I propose—

Senator SUTHERLAND (continuing). They would tend to conserve the coal supply, would they not?

Mr. BROOKS. They certainly would, and then with the increased cost of coal—of course the price goes up and that always tends toward economy. That apparently is the condition we have in England, that the price of coal has gone up, so that people do not use as much of it; they are more economical. There are so many unknown factors in the problem. I think the Royal Commission of England did pretty well when they decided they would not make any statement at all as to how long the coal would last.

Mr. MADISON. Do you not think that would be wise as to our own experts?

Mr. BROOKS. I have not made any statement as to how long our coal would last. I was asked yesterday to state how long the coal would last at the present rate of consumption. I simply looked up that data and presented it to the committee for what it was worth.

Mr. MADISON. I appreciate that, and I think you have given us valuable information; and you have been perfectly frank and fair in your answers.

Senator SUTHERLAND. Let me ask you one other question along that line. Do you not think that the conservation of water power will tend to operate against the conservation of coal?

Mr. BROOKS. Now, you are getting me into a matter which I do not know anything about. I have not gone into this matter of water power, and it seems to me you can, perhaps, find somebody else who can answer that question better than I can.

Senator SUTHERLAND. Very well.

Mr. JAMES. Did I understand you correctly when I thought you said that coal had increased in England by reason of the decrease in consumption of it?

Mr. BROOKS. I do not think I get your question, Mr. James.

Mr. JAMES. You said that they had quit using coal over there, as I understood you?

Mr. BROOKS. I said that the per capita consumption there was apparently falling off.

Mr. JAMES. And that was the reason that it was going up in price?

Mr. MADISON. Now, then, figuring out the present rate of increase in consumption, then how long would you say before the accessible coal would be exhausted—how long would it take to exhaust it?

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Mr. BROOKS. I said that the per capita consumption there was apparently falling off.

Mr. JAMES. And that was the reason that it was going up in price?

Mr. BROOKS. No; it was the other way; they were using less because it went up in price; they were using less of it per capita.

Mr. JAMES. That is what I thought. I could not understand how the failure to use it would increase the price of it.

Mr. GRAHAM. In the estimates for the United States, what was the minimum thickness of veins included?

Mr. BROOKS. I do not like to speak on that question offhand; I did not make the estimates; I had nothing to do with the making of the estimates in the States. My impression is it was about 2 feet or 18 inches. The Director of the Survey could reply as to that.

Mr. GRAHAM. Does the estimate include the whole body of the coal in the ground?

Mr. BROOKS. No.

Mr. GRAHAM. It included only so much of it as could be practically taken out?

Mr. BROOKS. Yes; only the recoveries, as they call it, which I think are figured at about 60 per cent—60 or 70 per cent.

Mr. GRAHAM. Would not that be low?

Mr. BROOKS. Well, it has been very much less than that in the past.

Mr. GRAHAM. In England do they not take out over 90 per cent?

Mr. BROOKS. They do in places; yes.

Mr. GRAHAM. And isn't it equally feasible here, if it can be done there?

Mr. BROOKS. It is merely a question of price of coal; that is all. If you can get enough for your coal, you can mine your vein out clean; if you can not, you can not afford to do it.

Mr. DENBY. You have answered a lot of hypothetical questions, the conditions being given, and you being asked for answers upon those conditions. I would like to ask you for an original statement, if you care to make it—and if you do not, I think it would be entirely proper for you to say so—as to whether you, yourself, as a scientific investigator, studying the conditions as you see them, find any cause for alarm as to the diminishing of the coal supply of the United States under present or prospective future conditions?

Mr. BROOKS. I would say as to that that I think the alarm has been very much exaggerated, because I believe that with the improvements in the method of utilizing coal, that we can get so much more out of our coal, that it will last a great deal longer, even with our increased population and increased industries; and then there are these other possible sources of power. Of course we have water power, and we have the tide, and we have the sun, and we have the wind. Now, there might be some way beyond anything we are considering now. But we are talking about something in the future, in the centuries to come. If those other sources of power are utilized, we can save on our coal.

Senator SUTHERLAND. Then in the course of a few more centuries we may discover the secret of gravitation, and be able to utilize that energy.

Mr. BROOKS. Well, we might possibly use radium.

Mr. GRAHAM. But you would not say, if all these things were realized and in operation, it would justify wastefulness?

Mr. BROOKS. I certainly should not. I think we should not waste our coal. I think that is an absolute crime. But the question of

aste is mostly a question of price. If the coal miner can get enough for his coal, if the consumer will pay more for his coal, the waste will be stopped. The reason we have waste of coal is because coal has been cheap.

The CHAIRMAN. Mr. Brooks, have you formed any opinion as to the best method of conserving the coal supply on the public lands—what steps the Government should take to conserve the supply of coal on the public lands of the United States? Have you formed any opinion on that subject? If you have, I wish you would be good enough to give it to us.

Mr. BROOKS. I have not gone into that very deeply. I think there is one thing we ought to remember, and that is that the waste in coal mining has been due, in part at least, to unrestricted competition, to a large number of small operators, each one of whom is trying to sell his coal and get it on the market—get control of the market. That means he is going to sell lower than the other man. That means again he is going to rob his coal deposits; he is going to take the coal that he can mine cheapest, and let the rest go. I think there is a fallacy in dividing up the public domain into these very small tracts, and expecting them to develop them economically. If you want the coal developed economically, you want to give enough to an individual miner or to a corporation so that they can afford to do it on a large scale.

The CHAIRMAN. In connection with that subject, which system would you regard as the best in the conservation line, either selling the coal lands or leasing them?

Mr. BROOKS. I think in the long run the leasing system would probably be preferable. My own idea of that would be to do as they do in some of the Australian States, and that is to give the person the option of having a leasehold or a freehold.

The CHAIRMAN. That is either buying it in fee or leasing it?

Mr. BROOKS. Buying it in fee or leasing it. I think in that way you could pass gradually to a leasehold system if the thing proved practicable. I might say that I am not at present in favor of leasing the Alaska coal fields, because they are too far away from Washington to make it desirable that under present conditions we should lease those lands, but I do think it is a matter we should look to in the future.

The CHAIRMAN. Now, you have had charge, directly or indirectly, for many years of the geological surveys of the Government in Alaska, have you not?

Mr. BROOKS. Yes, sir.

The CHAIRMAN. And have published a great many reports and have explored a great deal of that country?

Mr. BROOKS. Yes, sir.

The CHAIRMAN. Now, what I desire to ask you about is this: Under the conditions as you find them existing in Alaska, which method do you conceive to be the best of disposing of and developing the coal mines in Alaska?

Mr. BROOKS. I believe that if we could have a law there giving a man the option of a leasehold or a freehold, but not selling him the coal, except at such prices by which it would not pay him to hold it for purely speculative purposes—we want to put a value on it so as

to prevent his buying it simply to hold it; put it at a price by which he is bound, if he buys it, to develop it.

The CHAIRMAN. In connection with that, what would you regard as to the size of the holding—I mean by that—

Mr. BROOKS. The acreage?

The CHAIRMAN. Yes; you understand what I mean?

Mr. BROOKS. Yes; I think the acreage—

The CHAIRMAN. In order to operate them to advantage?

Mr. BROOKS. I think the acreage should be determined largely by tonnage. Some coal lands have a great deal more coal on them than others; it varies from six to say a hundred feet. My idea of that is that a man should have coal enough to last him for thirty years, or at least twenty-five years; say twenty-five or thirty years; possibly in Alaska even longer. That is, he ought to have enough so that he can run his business so that at the end of that time he can pay off his bonds and finish up his business. If he can mine for only ten years if he has coal enough only for ten years, he can not afford to open it up in so large a way.

The CHAIRMAN. Could you tell us, or give us your opinion, as to the approximate cost of installing a proper developing plant in these Bering coal fields? I mean by that such a plant as could be put into operation to work those mines to advantage and successfully.

Mr. BROOKS. You refer simply to the mining plant, not to the railroad?

The CHAIRMAN. Not to the railroad; exclusive of the railroad. If you had to go up there and open a mine and operate it successfully, what would be the cost?

Mr. BROOKS. I should figure on approximately a dollar or a dollar and a quarter per annual ton of production. That is, if you had a small mine, say, a hundred thousand tons, it might be done for \$100,000 to \$125,000, and increase in proportion. I think in the United States, on an average, they usually count on about a dollar a ton for the investment; that is, a dollar a ton for annual production; and in Alaska, of course, the cost there would be somewhat greater. So that it would, perhaps, be safe to figure 25 per cent greater; say a hundred thousand ton mine, I should say, would cost \$125,000 for investment. That would be a small mine, of course.

The CHAIRMAN. Would you consider the original investment necessary to develop a mine at the rate of a dollar a ton?

Mr. BROOKS. A dollar and a quarter per ton would, perhaps, be a safer figure.

Senator FLETCHER. You mean that is the investment for the plant exclusive of the cost of the lands?

Mr. BROOKS. Yes, sir.

The CHAIRMAN. Exclusive of the cost of the lands?

Mr. BROOKS. Yes, sir.

The CHAIRMAN. Exclusive of railway transportation?

Mr. BROOKS. Yes, sir.

The CHAIRMAN. And the cost of mining, too?

Mr. BROOKS. Yes, of course; exclusive of the cost of mining. That does not provide any capital for the opening up and doing the development work on the mine.

Mr. DENBY. That is just overhead working expenses?

Mr. BROOKS. Yes, sir.

The CHAIRMAN. I understood you last evening in your testimony to state that putting these coal mines in Alaska in chancery so that the people could not operate them and develop them, was destructive to the timber supply.

Mr. BROOKS. I referred there to the coal of the interior. On the coast they are not burning wood to any extent; they are burning British Columbia coal.

The CHAIRMAN. I mean back from the coast.

Mr. BROOKS. Up in the interior the fact that people can not mine coal has undoubtedly led them to burn more wood. That is, if these coal mines were opened up I believe that by this time we would be mining lignite coal at various places in the Yukon basin, and thereby conserving the scant supply of timber in there.

Senator PURCELL. I understood you to say, Mr. Brooks, that your idea is that it is best for the interests of the people that the coal mines of Alaska should be held by a monopoly, did I not?

Mr. BROOKS. No, sir.

Senator PURCELL. Is not that the effect of what you say?

Mr. BROOKS. No, sir.

Senator PURCELL. In other words, that large bodies of it should be given to those, whoever they are, that may work it?

Mr. BROOKS. I think we have two entirely distinct features of this question. One is the question of mining our coal in the most economical way. Now, that can best be brought about by having it in large holdings—in large bodies. Now, the other question is as to preventing exorbitant prices being charged for the coal. How that can be controlled, it is out of my province to say; but there is no question at all if you have the coal mined in large bodies you will conserve the coal. And that is just exactly what has happened in the anthracite coal fields, because there, since they have had the monopoly, they are taking out 90 and 95 per cent of their coal, when they used to take out only 40 or 50 per cent. That is the result of monopoly there. Whether the present generation is benefited by that, I do not know. The future generations will, undoubtedly because there is more coal left. But perhaps we are paying more for the coal than if there was unrestricted competition in the anthracite fields. I do not know as to that.

Senator PURCELL. I understood you also to say that you thought ought not to be so divided up as to make competition, and thereby—

Mr. BROOKS. I said that is the danger point, that if you have unrestricted competition—if it is an important matter, conserving the coal, that unrestricted competition works against you. I do not think there is any question about that.

Senator PURCELL. Are you acquainted with the coal conditions in the Northwest, in the States of North Dakota and South Dakota and Minnesota and Iowa?

Mr. BROOKS. No; I do not know anything about that at all.

Senator PURCELL. You do not know, as a matter of fact, that there is no competition in these States in regard to coal for fuel purposes, do you?

Mr. BROOKS. You mean in the matter of outside coals?

Senator PURCELL. Yes; I mean of the Pennsylvania coal.

Mr. BROOKS. There is no outside coal brought into the States, you mean?

Senator PURCELL. I mean of the Pennsylvania coals.

Mr. BROOKS. Yes, sir.

Senator PURCELL. In the Pennsylvania coals there is no competition, at least in the States of North and South Dakota. You pay one price for that coal, and everybody pays the same in those States.

Mr. BROOKS. Oh, I see what you mean. I misunderstood you.

Senator PURCELL. There is no competition.

Mr. GRAHAM. There is no discrimination either.

Senator PURCELL. That is true. Do you think that is a proper condition?

Mr. BROOKS. I should not want to buy coal under those conditions.

Senator PURCELL. Is not that the result of monopoly?

Mr. BROOKS. I think if you are going to turn your coal supply over to a monopoly that the only thing you could possibly do to conserve the interests of the people of the United States would be to control that monopoly, and say that you can have this coal in such a body, but you can not charge more than so much.

Senator PURCELL. It is true, is it not, that the Pennsylvania coal fields are practically owned by a monopoly, and the Pennsylvania Railroad, by Mr. Baer, and those people?

Mr. BROOKS. I do not know about the coal fields. I presume that refers to the Pennsylvania Railroad.

Senator PURCELL. No; I mean the coal fields.

Mr. BROOKS. It is the railroad that controls the situation.

Senator PURCELL. Have you been in any of the mines of Alaska personally yourself?

Mr. BROOKS. There are not any coal mines in Alaska.

Senator PURCELL. I mean have you been in the Bering fields?

Mr. BROOKS. I have been over the Bering fields.

Senator PURCELL. Some of them are opened up, are they not?

Mr. BROOKS. They are opened up, but they have not produced any coal.

Senator PURCELL. Have you been into the openings of any of those mines?

Mr. BROOKS. Yes, sir.

Senator PURCELL. Did you make any examination of them?

Mr. BROOKS. Yes, sir.

Senator PURCELL. Especially for the purpose of making a report to the Government?

Mr. BROOKS. Yes, sir.

Senator PURCELL. How does that coal compare with the other coal, of say, Washington and Oregon?

Mr. BROOKS. In fuel value it is about 25 per cent better than the Washington coal, and about the same in regard to the Oregon coal I think.

Mr. JAMES. You stated that many small operators created keen competition, and therefore waste of coal. Do they, by reason of that competition, cheapen the price of it to the consumer?

Mr. BROOKS. Undoubtedly.

Mr. JAMES. Not the other side of that proposition would be true that if these coal fields were in the hands of big concerns and without

that keen competition in operating, the price of coal would go up to the consumer?

Mr. BROOKS. Undoubtedly; unless there was some method of controlling them.

Mr. JAMES. If the coal supply in Alaska would last four or five thousand years; then it would be better for this generation—in fact, 5,000 generations to come—for us to let these operators sell this coal?

Mr. BROOKS. I didn't catch your question.

Mr. JAMES. I say it would be better for this generation, and for 50 generations yet to come, for this coal to be handled by many operators, small operators, because it would cheapen the price of the coal; that is, if the supply is so great that it would last five thousand years the world might come to an end before we would get rid of the supply of coal.

Mr. BROOKS. I should not want to make any guesses as to when the world was coming to an end.

Mr. JAMES. The point I am trying to make, trying to get you to see, is that the small operators, as you say, cheapen the price of coal to the consumer.

Mr. BROOKS. Yes, sir.

Mr. JAMES. And that if the supply of coal is so great as to last for five thousand years, it is not a matter of immediate consideration to stop the small operators from cheapening the price of coal to the consumer?

Mr. BROOKS. Of course, I have not subscribed to the idea that our coal would last five thousand years. Of course, that is, if you start with that assumption.

The CHAIRMAN. The gentleman from Kentucky overlooks the fact, probably, that if the world comes to an end the demand for coal might be greater.

Mr. JAMES. I think the demand for ice would be greater.

Mr. BROOKS. I think——

Mr. JAMES. I think, in view of the statement of the chairman, that the glaciers in Alaska would become desirable if the world came to an end.

Mr. BROOKS. I think I see your point. If we had an unlimited supply of coal, it would not make any difference whether we wasted it or not. The point would be it would cheapen it to the consumer. Of course we have not an unlimited supply of coal, and while we have these resources some of these coals are at such depths and the cost of simply mining them, if there was no increased demand, would make the price of the coal higher in the future.

Mr. JAMES. And the competition of the small operators cheapens, therefore, the price of the coal to the consumer?

Mr. BROOKS. There is no question about that.

Mr. MADISON. I simply understood you to state two economic facts.

Mr. JAMES. He stated many more than that.

Mr. MADISON. One is that monopoly would tend to the conservation of the coal; that is, that the ownership by a few will tend to the economic operation and development; that unrestricted competition, ownership by a great number of persons, small operators, will naturally tend to cause a cheapening of price. But as to those two economic facts you do not express any opinion as to which is preferable

or as to which system this country ought to follow. You are just simply stating those facts for our information?

Mr. BROOKS. As a consumer of coal I myself prefer unrestricted competition. But looking into the future I think there is some question as to which is the worst of the two evils. But it seems to me that there might be a middle ground chosen between the two.

Mr. GRAHAM. There were two of the questions asked you by the chairman that you did not follow out. I would like to hear your complete answer to those. One of them was the unit of property which one mining concern might own. He asked you how many acres, and you answered that it would be rather a question of tons but did not give the answer in either tons or acres. Will you do that now?

Mr. BROOKS. I think that no general rule ought to be laid down but my own idea is that they ought to have coal enough so that they can plan operations for, say, twenty-five or thirty years.

Mr. GRAHAM. It would be during the life of the ordinary plant that they would erect?

Mr. BROOKS. Yes, sir.

Mr. GRAHAM. Would you suggest a minimum in either tons—well, tonnage would be the only way you could?

Mr. BROOKS. Yes. While a mine, a small mine—a hundred thousand ton mine is a small mine—

Mr. DENBY. You mean a hundred thousand tons annual production?

Mr. BROOKS. Yes, sir; that is a small mine, compared with our eastern mines; but it is large in the State of Washington, so that you can start with that.

Mr. GRAHAM. Your answer would be about twenty-five times that?

Mr. BROOKS. That would be a small mine—about twenty-five times that—but that would not be an economic unit. I think you would want to figure on the mining that would produce—

Mr. GRAHAM. Three hundred thousand tons?

Mr. BROOKS. Three hundred thousand tons at least, or five hundred thousand tons, which would induce these economies which I have spoken of.

Mr. GRAHAM. Three thousand tons a day is being produced by many of the mines in the country, and even more than that.

Mr. BROOKS. Yes; I have particularly in mind the mines on the west coast where the tonnage is small.

Mr. GRAHAM. The other point is, you stated that you would not admit the advisability to lease the Alaska property at this time, but you think the true policy would be for the Government to lease it later?

Mr. BROOKS. Yes, sir.

Mr. GRAHAM. That necessarily implies that in your judgment the Government should retain the fee in the coal properties in Alaska otherwise, of course, they could not lease it in the future.

Mr. BROOKS. That would work out this way—

Mr. GRAHAM. Now, what would you say first in the way of a specific answer, if you can give one, as to your view of the Government's policy that it should retain the fee?

Mr. BROOKS. I will tell you just what I mean by that. I would suggest holding the land at a price at which no one could afford to buy

it unless they were going to open a mine, and the result would be that there would not be very much land sold, because it will be a good many years before Alaska can find a market for very much coal, so that if the land were held at a price at which a person could only afford to buy it at if they were going to open it, that land would remain in Government ownership. I think probably, however, that my real preference would be to have an option on a leasehold or freehold.

Mr. GRAHAM. By freehold—I am not quite sure that I understand what you mean by that.

Mr. BROOKS. I mean the selling of the land.

Mr. GRAHAM. Do you mean by freehold that the Government would absolutely part with the title?

Mr. BROOKS. Yes, sir.

Mr. GRAHAM. If the Government did that it could not, of course, lease the coal in the future.

Mr. BROOKS. If the Government sold the land only at a price at which a man could buy if he was going to open the mine, why, most of the land would be in Government ownership, because the market for the Alaska coal is not going to be so large in the next few years.

Mr. GRAHAM. If the Alaska mines were in operation along lines suggested by you, mines capable of hoisting, say, a hundred thousand tons a year or more, with transportation to the coast, would not the market be quite extensive down the coast of both North and South America?

Mr. BROOKS. The present market for coal—the present consumption out there is about four and a half million tons.

Mr. GRAHAM. But you explained that was largely due to the fact that they could not get coal and were burning wood, which they should not be doing.

Mr. BROOKS. I think you misunderstood me. I referred to wood burning, but that was simply the wood consumed in the interior of Alaska, where you can not take any coal. The reason there is no more coal consumed on the west coast is because of the oil. Oil is used as fuel there. As far as South America is concerned, I doubt very much whether Alaska can ship her coal to South America in competition with the English and eastern coal, and can not when the Panama Canal is finished.

Mr. GRAHAM. What would the amount of coal which Alaska could possibly furnish to the coast cities of the United States be, in your judgment—San Francisco, Los Angeles, and the other Pacific coast cities of the United States?

Mr. BROOKS. The best figures I can get would indicate to me that they might have a market there for a million tons of coal in the next ten years, say.

Mr. GRAHAM. And with the mines developed there and the production of coal cheapened as development went on, would it not be feasible, when the canal was opened, to get coal from Alaska to the Gulf of Mexico cities?

Mr. BROOKS. I think it would work the other way; that is, the eastern coal, which will always be mined cheaper—you can put coal on a ship here at Norfolk probably for \$2.50 per ton—I am wrong about that, I mean \$2 a ton. Two dollars and fifty cents is what the navy pays for the select coal. And you take it through the canal and deliver it at San Francisco for \$2.50; that is \$4.50. The

figures I have on the cost of bringing coal into San Francisco from Alaska is about \$4.25, which is allowing a profit of probably 20 cents. So the margin is not very great there, and the competition would be strong. Moreover, Australia is sending coal into California now, and they have very low freight rates from Australia, and there is always going to be competition from the Australian coals, because the ships go out loaded with wheat and flour and bring back coal as ballast.

Mr. GRAHAM. And the reasons you have given operate just as strongly against private ownership of Alaska coal as they would if the Government retained the ownership of it? Would not the logical conclusion of your argument be that the best thing they could do with Alaska coal would be to hold it for the future?

Mr. BROOKS. I do not think I got the first part of your question, Mr. Graham.

Mr. GRAHAM. The conclusion I draw from your statements, which are in the nature of an argument, is that with the opening of the Panama Canal the Alaska coal will become less valuable in the market, and it will be practically kept out of the market by Pennsylvania coal, Virginia coal, and Australian coal. Now, would that not be equally true whether the mines in Alaska or the coal there was owned by the Government or by private monopoly?

Mr. BROOKS. It certainly would, but there is this to be said about it. In the first place, if you have the Alaska coal fields developed before the Panama Canal is finished, you will give them a start; in the second place, if you bring the Alaska coal down to California and move your eastern coal to California, you have competition, which will greatly benefit the consumer on the west coast. They are paying enormously for their coal to-day. And the other point about that is, if you carry coal from the east coast to the west coast you are consuming coal in transit, and you are also taking your coal reserve from near the centers of population and taking it out there where it is less valuable. If we want to do anything, we want to conserve our eastern coal fields because they are near the centers of population, and worth more to us.

Mr. GRAHAM. Then from that I understand the likelihood of eastern coal going to the Pacific coast would not be very great?

Mr. BROOKS. I think it would.

Mr. GRAHAM. You think it would be great?

Mr. BROOKS. Yes; but I think if you bring in Alaska coal there will be competition there, and there will be less likelihood of it than if you should shut up the Alaska coal and let the eastern coal have their own way about it.

Mr. GRAHAM. The real point I want to get at now is your judgment on this, as to the question of policy, whether or not the Government should retain title to the Alaska coal fields, or whether it should part with the title to the individuals or corporations—whether it should lease or sell.

Mr. BROOKS. I think that the general policy of leasing, looking to the future, is best, but I think in view of the fact that Alaska is so far distant from the Capitol here—everything has to be run from the Capitol—that we had better start our leasing system of the coal fields in the States and extend it gradually to Alaska. I do not believe there will be any harm done by trying it out here first, where it is easy to get the information.

Mr. MADISON. Well, now, if the general policy of leasing is correct, why can we not lease the Alaska lands? Why is it that the distance from Washington makes so much difference?

Mr. BROOKS. My point is just this: If you are—if you lease the land—somebody here in Washington makes the decisions. Now, when, some dispute up there arises through some local agent, and it will take a month or six weeks, perhaps, to communicate with the Washington office, and perhaps they would have to send somebody up there, maybe a mining engineer would be sent up there to investigate this thing. In the meantime everything is being tied up. Whereas if you lease the coal lands in Oklahoma or the West in a very short time you are in direct communication. I think that no harm would be done by deferring the matter now, providing we sell the lands at somewhat of their value.

Mr. MADISON. I think that would have to be determined by valuation made by experts.

Mr. BROOKS. It certainly would; that is, you would have to make a tonnage estimate. You see the Government now owns probably about one-third of the coal supply of the United States; that much is still in public ownership, and it seems to me that the Alaska part is such a small fraction of that, that we could afford to be very liberal in Alaska and follow the policy that we have in the past, of giving a freehold, even at the expense, possibly, of sacrificing somebody in the future, because I think if these lands are sold, as I say, at their true value, they will not be bought by anybody except those that are going to develop them.

Senator FLETCHER. Do you think \$10 an acre a fair price?

Mr. BROOKS. Ten dollars an acre is too small for the best land, and too much for the poorer land, for the lignites.

Senator FLETCHER. I think it is a good idea to give Mr. Vertrees a chance at this witness.

Mr. VERTREES. As I understand you, Mr. Brooks, and you will observe I have not called you "professor"—

Mr. GRAHAM. I beg your pardon for doing so.

Mr. VERTREES. The Government still retains and owns about one-third of the coal areas, considered on a tonnage basis, in the United States?

Mr. BROOKS. Yes, sir.

Mr. VERTREES. And, relatively speaking, the Alaska coal areas are small?

Mr. BROOKS. Yes, sir.

Mr. VERTREES. And is it not true, though, that the question of development of coal in Alaska and the mining of coal there is a matter of vital importance to Alaska?

Mr. BROOKS. It is the most important question which Alaskans have, because it means their whole future. If you do not open up these coal fields Alaska is going to go backward, and these people are going to leave there.

Mr. VERTREES. You showed us a map in relief yesterday, and I believe some of the committee were absent. I believe it would be a good idea—this is the map in relief, and, as I understand you, that which is marked in green coloring indicates the forests and valleys?

Mr. BROOKS. Yes, sir.

Mr. VERTREES. And you stated yesterday that in some of these valleys, and particularly you named the Tanana Valley, that there were, as you thought, considerable agricultural possibilities?

Mr. BROOKS. That is true; yes, sir.

Mr. VERTREES. Now, considering Alaska as a whole, that part which is adapted to agriculture and that part which is not, what is the relative proportion?

Mr. BROOKS. Why, I figure the agricultural areas roughly at about 40,000 square miles, or something like that.

Mr. VERTREES. And, now, what percentage would that be of the whole?

Mr. BROOKS. That is about 8 per cent, or something like that.

Mr. VERTREES. In other words, about 8 per cent of Alaska you think has agricultural possibilities?

Mr. BROOKS. Yes, sir.

Mr. VERTREES. But the remainder, then, is valuable for what purpose?

Mr. BROOKS. Why, we have minerals chiefly.

Mr. VERTREES. It is valuable for minerals?

Mr. BROOKS. Yes, sir.

Mr. VERTREES. And these minerals are of what kind?

Mr. BROOKS. We have gold, copper, silver, coal, possibly oil, possibly tin, and various other minerals.

Mr. VERTREES. So that we may, then, say safely, may we not, that the wealth of Alaska consists practically in its minerals?

Mr. BROOKS. Yes, sir; except—

Mr. VERTREES. Could we not say further and with absolute truth that the development of these minerals depends upon transportation, as well as labor?

Mr. BROOKS. That is true of most minerals. Under present conditions they can only work their richest placer deposits; they can not extract gold from anything except the richest placer deposits.

Mr. VERTREES. And all that is absolutely dependent upon transportation?

Mr. BROOKS. Yes, sir.

Mr. VERTREES. And in turn is not that all dependent upon the question of fuel, or in these times and under these conditions the question of coal?

Mr. BROOKS. Yes, sir.

Mr. VERTREES. So that the future of Alaska depends largely upon the coal proposition, or almost entirely, we might say, for the development of its mineral resources, which constitute its chief wealth.

Mr. BROOKS. Yes, sir.

Mr. VERTREES. That is correct?

Mr. BROOKS. Yes, sir.

Mr. VERTREES. Now, looking at it as the vital question to Alaska and having regard to the legislation that is existing with respect to it and the conditions which prevail, is it or is it not true that Alaska is to-day retrograding, that the population is apprehensive, disappointed, and really diminishing?

Mr. BROOKS. That has been my observation in Alaska, that the people are leaving and that they are becoming discouraged. There are fewer people going there, and as the business is falling off there are fewer steamers.

Mr. VERTREES. Now, when we get to the question of the conservation of coal supply of the United States—that is a broad term that covers the whole United States, and is met if the coals east are conserved as well as the coals west; isn't that true?

Mr. BROOKS. Yes, sir.

Mr. VERTREES. Isn't it, as a matter of fact, a constant existing expense for coals to be transported from the East across the continent or use there?

Mr. BROOKS. It is not only an expense, but a direct loss by the amount of fuel that is consumed in transportation, and it makes the west coast people pay too much for their coal, altogether too much.

Mr. VERTREES. On coming back to what you suggested on yesterday, too, and speaking with reference to the Government, is it not a fact the excess of cost due to freight rates and transportation merely on the coal supply for the fleet that is brought around is more than half a million dollars per annum in cash every year?

Mr. BROOKS. It certainly is that if you include all the coal purchased. It may not be quite that for the fleet alone.

Mr. VERTREES. I mean for governmental purposes?

Mr. BROOKS. For governmental purposes it would be more than half a million dollars.

Mr. VERTREES. Moreover, has the Government any base of supply on the west coast for its supply of coal in case of war?

Mr. BROOKS. They have only the supply that they have accumulated at the stations by bringing around eastern coal. The navy does not use anything except eastern coal.

Mr. VERTREES. If I understand you correctly, the Alaska field can produce coal of as good quality as that now used by the navy—that is, some portions of it?

Mr. BROOKS. I believe both the Matanuska and the Bering River fields would produce an excellent navy coal.

Mr. VERTREES. How far apart are these Matanuska and Katalla fields?

Mr. BROOKS. About 300 miles.

The CHAIRMAN. Mr. Vertrees, will you allow me to suggest at this point that he point out on that diagram the location of the Bering and the Matanuska and the other fields.

Mr. VERTREES. Point out the fields on this map, if you please.

Mr. BROOKS. The Bering River and Katalla field is right here, just at the southern base of this high range. The Matanuska field lies in the Matanuska Valley in here, on the other side of the range, two or three hundred miles distant.

Mr. VERTREES. Now, as I have understood you, the question therefore of coal development is vital to Alaska, and highly important to the United States, and particularly the western portion.

Mr. BROOKS. Yes, sir.

Mr. VERTREES. And practically would operate to conserve the coal supply of the eastern portion as well, if it was developed?

Mr. BROOKS. Yes, sir.

Mr. VERTREES. So, for all these reasons, as I understand you, you think something should be done, some way that will admit of the development of the Alaska coal fields?

Mr. BROOKS. I believe it is a matter of national importance and of special importance to the western coast. I think it is absolutely vital to Alaskans that the coal be developed.

Senator FLETCHER. May I interrupt just a moment there and inquire about the harbors and the waters of those two fields?

Mr. BROOKS. The map behind you, Senator, would show a little better. The Katalla and Bering River field is accessible through two harbors, one at Cordova, near the west end of the map, where there is ample shelter. From there a railroad could be built with a mileage of about 55 miles, using the shortest route to the coal fields. There is also a channel which runs in behind these islands which you see in the southeastern part of this map, to a point known as Controller Bay, which is about 27 miles distant from the coal fields. That channel offers some shelter, and although it is not an ideal harbor it probably is sufficient to permit of coal shipments there. Either one of those points could probably be used for coastal terminals to that field. The Matanuska field lies about 170 or 180 miles from Resurrection Bay, which is an excellent harbor and open the year round. A railroad has been built from there about halfway to the coal fields.

The CHAIRMAN. How much did you say had been built. I think you are mistaken about that.

Mr. BROOKS. I think it is about 70 miles.

The CHAIRMAN. It is 60 miles to Turnagain Arm.

Mr. BROOKS. They are beyond that now. They are more than half way to Turnagain Arm. They are pretty close to Turnagain Arm, or were last fall.

The CHAIRMAN. Then they will have to build around Turnagain Arm on the north side?

Mr. BROOKS. On the north side where they have done some work.

The CHAIRMAN. Up Knik Bay, then up Knik River and then up the Matanuska Valley?

Mr. BROOKS. Yes, sir.

The CHAIRMAN. And they have at least one hundred or a hundred and fifty miles to build to reach that field?

Mr. BROOKS. I think it is perhaps—yes, it is over a hundred, but I think it is probably not more than a hundred and twenty. You see that railroad goes up through this pass here and then swings around this Turnagain Arm and comes up to the Matanuska Valley there.

Senator FLINT. Will you point out the town of Nelson there to us if you please?

The CHAIRMAN. That is on Cordova Bay, Resurrection Bay is then southeast, on the east side of Kenai Peninsula.

Mr. BROOKS. Yes, sir.

The CHAIRMAN. Is it not a fact that to construct that railroad from the east end up to Turnagain Arm on the north side, that on the north side of the arm they will have to build the road through rock?

Mr. BROOKS. Yes, sir; they have done considerable rock work there already.

The CHAIRMAN. I think the tide at Turnagain Arm is 40 or 50 feet.

Mr. BROOKS. Yes, sir; it is very high.

The CHAIRMAN. They have to build it up from the sea?

Mr. BROOKS. Yes, sir.

The CHAIRMAN. And that is a very expensive line to build up to the Matanuska Valley field?

Mr. BROOKS. Well, after they get into the Knik, I think from then on the expense will not be so high.

Mr. VERTREES. Now, Mr. Brooks, we will recur to the point we had in mind and we will consider that. We had gotten to the point here you stated to the committee that you regarded the matter of the development of the coal industry in Alaska as absolutely essential, or the reasons which you gave.

Mr. BROOKS. Yes, sir.

Mr. VERTREES. And you gave several reasons.

Mr. BROOKS. Yes, sir.

Mr. VERTREES. You have also expressed to this committee the idea that there were two ways to do that; one was by selling the coal lands or areas and another by leasing them, and, if I understood you, you expressed the opinion that it would be advisable to adopt the system which admitted of either at the pleasure of the operator, and did I understand you to say that was something like the system in Australia?

Mr. BROOKS. Yes, sir; that is the system used in some of the Australian States.

Mr. VERTREES. What is the net result where they have used that system of leaving the option with the operator to either acquire the land and hold it absolutely, or to lease it from the Government. As a practical matter, how has it worked?

Mr. BROOKS. I am informed that they have gone over to the leasehold system. The people now are leasing the lands, preferring to lease them than to own them absolutely.

Mr. VERTREES. But having regard now to the fact that Alaska is a very and very rugged and a very undeveloped country, and that it is valuable principally for its minerals; having regard also to what may be called the national habit of thinking in America, as to investment, isn't it true that the leasing system is one that would not appeal very much to the investor; wouldn't it be rather difficult to bond property and to develop it on that basis?

Mr. BROOKS. I believe it would. That is the reason I have some question about the desirability of applying the leasing system to Alaska at the present time. I believe in the States where the conditions are more settled, where there is a market for the coal, that the leasing system might be introduced to advantage.

Mr. VERTREES. Then, having regard to the conditions that you have described, both as to the Government and its uses, and its usual demands, and the demands of the Pacific coast, and the owing to those people by cheapening the coal, and the absolute necessity for the coal in Alaska being developed, which is an important matter of government policy and economy—wouldn't any system be advisable and desirable that admitted of the development of these coal fields?

Mr. BROOKS. Most decidedly; yes. I think a very great injustice being done to Alaskans by not permitting them to use their coal, which is at hand, where they have to bring in British Columbia coal for thousands of miles, and where their operations are discouraged because they can not get title to the coal lands. I think, even we have to go into the leasing system for Alaska, I don't subscribe at all to the idea that the money derived from the leasing is something that the people of the United States ought to have—I think that if we have to lease the coal lands in Alaska, every cent that is taken in from the leasing should be put right back into the

Territory for the encouragement of the building of wagon roads, and possibly the encouragement of railroads where there is little present business.

Mr. VERTREES. So, that it is after all a question of the government of Alaska and not a question of profit to the United States?

Mr. BROOKS. No; I do not subscribe to the idea for a moment that these Alaska coal lands should in any way be taxed for the benefit of the nonresidents.

Mr. VERTREES. You have stated that it ought to be given out, that is, disposed of, to operators in such quantities and at such prices as would oblige them to develop it—to work it. If I understand the idea which you wish to convey to us, it is this, that if the land is sold so cheaply that capitalists can buy it and hold their vast areas and many acres indefinitely for years and years and years to come before they would touch it; the practical result of that might be that they would do that and thus arrest the development of the lands.

Mr. BROOKS. Yes, sir.

Mr. VERTREES. But your idea is to put it at such price that the capital invested, the annual accumulation of interest, would be so large it would eat them up and they would have no profit, but would have to work it. Is that your idea?

Mr. BROOKS. That is my idea; it is simply to prevent speculation in the coal lands; that is all.

Mr. VERTREES. To get back to another idea which underlies that if I understand you, you want a system which will not conserve these minerals and hold them in cold storage for all posterity, but to bring out the development of them now, work them now?

Mr. BROOKS. That is exactly the point. The land which has coal on it and which can be mined now with a profit should be thrown open either by the leasehold or the freehold system, and that the other coal should remain in government ownership simply by placing a price on it which would discourage people from holding it unless they were going to work it, unless they were going to develop it.

Mr. VERTREES. And, so far as the people of the United States as a whole are concerned, considering the fact that to-day the Government owns one-third of all the coal areas, this cuts no figure in the general policy one way or the other?

Mr. BROOKS. I believe it is an Alaskan question entirely, except I do think that the people on the west coast are entitled to some consideration, because they are paying too much for their coal and are getting coal of awfully poor quality, so that I think they are vitally interested in the question also.

Mr. MADISON. So that it is more than an Alaskan question alone?

Mr. BROOKS. So far as the actual production of coal goes, it affects the entire west coast. It is a question of immediate interest, because after they have completed the Panama Canal we can bring coal around there, and while it will probably be sold at a high figure unless they have competition from Alaska, at the same time they will be able to get the high-grade coals there and the cokes that they need.

Mr. VERTREES. When is it estimated that the Panama Canal will be completed?

Mr. BROOKS. I do not recall now.

Mr. VERTREES. It is some years distant, is it not?

Mr. BROOKS. Yes, sir.

Mr. VERTREES. And the Alaska people could freeze and starve to death in the meantime, could they not?

Mr. BROOKS. Yes, sir.

Senator PURCELL. What is the population of Alaska?

Mr. BROOKS. That is a matter very much in doubt, Senator. My guess of it is there are between thirty and thirty-five thousand, possibly—whites.

The CHAIRMAN. It is known now that there are less white people than there were at the last census, is it not?

Mr. BROOKS. Yes, sir; and in addition to that there are some 10,000 natives.

Senator PURCELL. That is, Indians?

Mr. BROOKS. Indians and Eskimos.

Senator PURCELL. Making altogether about sixty-five or seventy thousand?

Mr. BROOKS. Possibly; yes, sir; but there have been so many people who have left Alaska in the last year or two those figures might be a little high. My last estimate, which I made some years ago, was about nearly 40,000 white people.

Senator PURCELL. Are they scattered over the area represented by that green shade?

Mr. BROOKS. Mostly. There is probably one-third of the white population along the Pacific seaboard there.

Senator PURCELL. About a third of them?

Mr. BROOKS. Yes, sir. And the others are scattered in the interior here, and chiefly in the placer camps.

Senator PURCELL. You say you have been up there where you had your pencil?

Mr. BROOKS. Yes, sir.

Senator PURCELL. Are there coal lands there?

Mr. BROOKS. In here [indicating] there is a large quantity of lignite.

Mr. VERTREES. When you say "in here"—

Mr. BROOKS. In the Tanana Valley.

Mr. VERTREES. Near what point?

Mr. BROOKS. In the Tanana Valley, about 30 or 40 miles south of the town of Fairbanks.

Senator PURCELL. I think some witness testified here that there are outcroppings of this coal all along the coast?

Mr. BROOKS. There is coal all along here on Cook Inlet.

Senator PURCELL. What do you understand by outcroppings, the exposure of the coal?

Mr. BROOKS. The exposure of the coal, yes, sir; natural exposure.

Senator PURCELL. Wherever it is exposed it would not cost much to mine it, of course, on the coast?

Mr. BROOKS. No, sir.

Senator PURCELL. Then the people there could get coal pretty cheap, couldn't they, if they had the means of conveying it?

Mr. BROOKS. If they were allowed to take it; yes, sir.

The CHAIRMAN. The Senator must remember that it is in the forest service and they can not get at it.

Senator PURCELL. That is the only reason. It wasn't there when Cunningham got it.

Mr. BROOKS. This coal you speak of is a lower grade coal; that is, lignite.

Senator PURCELL. That is as good as wood, is it not?

Mr. BROOKS. Yes, sir. But when I speak of the consumption of wood I refer to the interior; there is practically no wood burned along the coast there.

Senator PURCELL. There isn't much wood burned in the interior, is there? You wouldn't say that the few people who live up there, that the wood they burn, would in any way jeopardize the forest?

Mr. BROOKS. There is an enormous quantity of wood burned up there.

Senator PURCELL. For fuel?

Mr. BROOKS. Yes, sir.

Senator PURCELL. How many people would you say are in there?

Mr. BROOKS. There are seven or eight thousand people in this interior country here. The town of Fairbanks estimates that they are burning 24,000 cords of wood in that town?

Senator PURCELL. In the town of Fairbanks?

Mr. BROOKS. Yes, sir. You see the mining there at Fairbanks—I understand that the mining is placer mining, but they have to use a hoist also; they have to thaw the ground and they have to have a steam plant.

Senator PURCELL. And it is the miners who are using the wood?

Mr. BROOKS. The miners and the people, too, because the climate is cold. You see the forests are scattered there; they are thin, so that the use of the wood has a serious effect on the forest.

Senator PURCELL. Then they are not worth conserving, are they?

Mr. BROOKS. They are only worth conserving because there is no other timber there.

Senator PURCELL. Well, they might as well be burnt up one time as another, what fuel is there.

Mr. BROOKS. I would not prevent the people from using the wood, but I would do everything in my power to have them burn coal in preference to wood.

Senator PURCELL. Are there croppings up along that valley, the Tanana Valley, you spoke of?

Mr. BROOKS. I beg pardon.

Senator PURCELL. Are there croppings of coal up along that valley, the Tanana Valley, you spoke of?

Mr. BROOKS. Croppings on the south side of the valley about 30 miles south of the river.

Mr. VERTREES. None of that high-grade coal such as the navy demands, is on the sea level, is it?

Mr. BROOKS. No.

Mr. VERTREES. Down at the coast line, I mean?

Mr. BROOKS. No.

Mr. VERTREES. What is the nearest?

Mr. BROOKS. The Bering River field is about 25 miles from the coast.

Mr. VERTREES. A great deal has been said about the veins of the coal in Alaska and the thickness. What is the thickness of veins there, how do they run?

Mr. BROOKS. We have in the high-grade coal—I think they might average them from, say, 3 to 15 or 20 feet; that is, in the Matanuska and Bering River fields.

Mr. VERTREES. In the high-grade coal?

Mr. BROOKS. Yes, sir.

Mr. VERTREES. Now, give the thickness?

Mr. BROOKS. We have some very large beds in the lignite.

Mr. VERTREES. Give us the extremes?

Mr. BROOKS. I have measured beds of 20 feet, a number of them, myself. I know one that is far above that.

Mr. VERTREES. As a matter of mining, is not the question, under modern conditions, and so far as is known to the art of mining, as it is brought to this day—is not this true under these conditions, that thick veins can not be mined profitably; that is, without enormous waste?

Mr. BROOKS. It costs more to mine beds above a certain thickness. I think the limit is 8 or 9 feet; I do not remember just exactly. Above that it costs more to mine it.

Mr. VERTREES. Is it not almost impracticable when the vein is very thick?

Mr. BROOKS. It might be, of course, if it was very thick.

Mr. VERTREES. But can you state to this committee as to the manner in which some thick mining is carried on, mining of thick veins, in Europe?

Mr. BROOKS. I know they use the method of filling.

Mr. VERTREES. What do you mean by that?

Mr. BROOKS. They mine out the coal and fill in behind it; in some cases bringing in sand and filling in back—fill in the opening from which they have taken the coal and keep building it up.

Mr. VERTREES. That is where the veins are very thick?

Mr. BROOKS. Yes, sir.

Mr. VERTREES. Twenty-five or thirty feet, or something like that?

Mr. BROOKS. Yes, sir.

Mr. VERTREES. You stated that there was something like 509,000 square miles of coal areas. Did you include Alaska in that?

Mr. BROOKS. Yes; that is the total. Of course, Alaska is just a small part of it.

Mr. VERTREES. Now, I want to ask you about that national forest reserve up there. Some of the committee were absent, and I want you to point out to those members where it is on this map.

Mr. BROOKS. The eastern boundary of it?

Mr. VERTREES. The Chugach reserve.

Mr. BROOKS. From Cape Suckling up to this high divide, and it follows that divide westward to Copper, crosses the Copper River, and still following the divide in these high ranges here comes down to the coast at Cook Inlet, and swings around the western side of the Kenai Peninsula and then cuts through these high ranges again to some point on the coast.

Mr. VERTREES. How many square miles does it include?

Mr. BROOKS. I have not figured it out.

Mr. VERTREES. But you do know this, that there is not more than one-fifth that is in timber.

Mr. BROOKS. There is not more than one-fifth that is in timber.

Mr. VERTREES. And the other is glaciers and mountainous, too; no timber at all on it?

Mr. BROOKS. Well, it is the areas that stand above the timber line, and some of the flats down near the coast that are also without timber.

Mr. VERTREES. Do you know Mr. Langille?

Mr. BROOKS. The forest supervisor?

Mr. VERTREES. Did you ever see his report with reference to that?

Mr. BROOKS. I have never seen his report; no, I have never seen his report. I have seen extracts from it that were published in some of these hearings.

Mr. VERTREES. And did you ever see Mr. Ballinger's report, the Secretary of the Interior, dated April 24, 1907, in which he opposed the establishment of that forest reserve?

Mr. BROOKS. Well, I read that in the record.

Mr. VERTREES. He gave the reasons why, quoting largely from Mr. Langille's report?

Mr. BROOKS. Yes, sir.

Mr. VERTREES. Do you remember that?

Mr. BROOKS. Yes, sir; I read that.

Mr. VERTREES. I want to ask you whether or not you consider that a correct statement—true [counsel handing report to witness].

Mr. BROOKS. I recall that now. I was very much impressed with Mr. Langille's arguments there. I think he was entirely correct in recommending adversely to the creation of the Chugach Forest Reserve, so far at least as it refers to Prince William Sound region. He calls attention to the fact that there is a little timber there, and what little timber there is is simply for local use, and that there is no danger of fire, and, of course, in that—

Mr. VERTREES. Can you suggest any reason to this committee why four-fifths of that reserve should be preserved?

Mr. BROOKS. There isn't any reason; no, sir.

Mr. VERTREES. Have you had any conversation with Mr. Ballinger with reference to the general question you have considered here, that is enough to know that he reasonably understands the general situation in Alaska?

Mr. BROOKS. Yes; I have conferred with him once or twice.

Mr. VERTREES. Did you at any time have a conversation with him with reference to the rules and regulations to be established with reference to Alaska?

Mr. BROOKS. Yes; when Mr. Ballinger was Commissioner of the General Land Office I was directed by the Director of the Geological Survey to examine the regulations that had been made by the Land Office interpreting the coal-land laws, and to confer with Mr. Ballinger in regard to them. The regulations were then in galley proof, and as I recall I went to Mr. Ballinger's office and made some suggestions which were chiefly a plea to make the regulations more lenient, because my sympathies were entirely with those people who were trying to develop coal lands up there. Mr. Ballinger said that he had a good deal of sympathy for the people who were trying to develop Alaska, but that the law was the law and that all we could do was to make regulations under it.

Mr. VERTREES. I call your attention here to regulation known as regulation 6, and ask you if you recognize that as one that relates to and controls coal mining in Alaska; and if you do so, please read it to the committee.

Mr. BROOKS. Yes; this is one of the coal-mining regulations.

The CHAIRMAN. Please read it.

Mr. BROOKS (reading):

6. There is no authority under which a coal mine upon public lands, entry not having been made, may be worked and operated for profit and sale of the coal, or beyond the opening and improving of the mine as a condition precedent to the right to apply for patent.

Mr. VERTREES. One question again as to the value of these coals; Mr. Brooks—as to the question of valuation. If these lands were to be sold for development—I understand you to say the development is a prime question—what are those coals, the best of them, worth in the place, as they now are, and what would you estimate as a reasonable value of them per ton?

Mr. BROOKS. In the ground?

Mr. VERTREES. Yes; in the ground.

Mr. BROOKS. Using the best information we have, I should say that the coals of the Bering River field which can be reasonably expected to be mined during the next thirty or forty years should be valued at about one-half of 1 cent per ton in the ground.

Mr. VERTREES. The inferior grades of coal you would value at that?

Mr. BROOKS. Oh, away below that; this is the high-grade coal I speak of.

Senator PURCELL. It could not be below that very far.

Mr. BROOKS. You would have several tons?

Mr. VERTREES. That does not affect the question. We are on the question of what it is worth, whether much or little. Mr. Brooks, as to the question of leasing, what would you say as to the royalty per ton, if that system were adopted?

Mr. BROOKS. That is a rather difficult question to answer offhand, but from the attention I have given to it I should say that the royalty at first, for the first ten years at least, ought not to exceed 5 cents a ton. It ought to be a more or less nominal royalty. If you had a royalty of 3 or 4 cents, you might the first ten years increase it up to 5 cents, possibly up to 8 for the latter part of the lease, supposing you were leasing for thirty years. I say that because for the first ten years the operator will be very busy finding a market and making any profit out of his coal, and I think if the royalties were put much higher than that it would completely discourage anybody from opening that coal field.

Mr. VERTREES. Do you know what the cost of mining per ton in the eastern fields of the United States is, the average, say?

Mr. BROOKS. The bituminous mining is approximately about 90 cents.

Mr. VERTREES. Have you made any estimate of what it would probably cost in these Alaska fields?

Mr. BROOKS. I compared them with the cost in Washington. The cost in the State of Washington varies from \$1.40 to \$2.15 a ton, and it seems to me that it is not safe to put the cost of mining in the Bering River field at much less than \$2 a ton, because it might be more than that.

Mr. VERTREES. That excludes the question of transportation?

Mr. BROOKS. Yes, sir; that is f. o. b. at the pit's mouth.

Mr. VERTREES. Then, Mr. Brooks, as I understand you, as a net result of what you have said, one result is, that there are very exaggerated and erroneous notions as to the real value of the coal fields of Alaska.

Mr. BROOKS. As far as monetary value goes, they certainly are very erroneous, some of the figures that have been published.

Mr. VERTREES. And the views you have, after studying that question for many years and making twelve different trips to Alaska, having charge of the whole matter, are the views which you have here expressed to the committee?

Mr. BROOKS. Yes, sir.

Mr. VERTREES. Both as to conditions which exist and as to what ought to be done with respect to Alaska?

Mr. BROOKS. Yes, sir.

Senator FLETCHER. Mr. Brooks, you read rule 6, the provision that there is no authority under which a coal mine upon public lands, entry not having been made, may be worked and operated for profit and sale of the coal, or beyond the opening and improving of the mine as a condition precedent to the right to apply for patent. What under the law is required in the way of opening and improving a mine before patent can be obtained?

Mr. BROOKS. Well, I do not believe I had better try to answer these questions that the land office men can answer so well, because I am not very conversant with the situation.

Senator FLETCHER. You were asked about that particular section, and that is the language of it.

Mr. VERTREES. I asked merely with reference to showing that there could not be any mining carried on. That was the reason.

Senator FLETCHER. I do not find anything in the law requiring the improving of a mine before patent is obtained to coal land.

The CHAIRMAN. It is where there is association. A single miner need not, but if a company seeks to enter more than one claim there must be what is called development.

Are you through, Mr. Vertrees?

Mr. VERTREES. Yes, sir.

The CHAIRMAN. Inasmuch as the testimony of this witness relates to conservation, I think Mr. Pepper is entitled to cross-examine him.

Mr. PEPPER. I have only two or three question to ask, and I would rather defer to Mr. Brandeis if he wishes to question first. Perhaps you will allow me to ask a few afterwards.

Mr. GRAHAM. Just a moment, Mr. Brandeis. May I ask with reference to the Chugach forest, of what use or what value are those mountain peaks included in the forest that are above timber line, and does it matter whether they are included in the forest reserve or not?

Mr. BROOKS. The mountain peaks are covered with glaciers, and it, of course, makes no difference, but as long as you are in a forest reserve, as soon as you drop down in the valley it makes some difference, because there is more or less red tape necessary to be complied with.

Mr. GRAHAM. But is there timber in the valley?

Mr. BROOKS. In many cases, no.

Mr. GRAHAM. Is it susceptible of growing timber?

Mr. BROOKS. I think the timber that is there is all the timber that will grow there. I think nature adapts itself to the topography.

Mr. GRAHAM. I want to get at the meat of it, Mr. Brooks, and to broaden my question. You stated that there was about four-fifths of it that should not be in the forest reserve.

Mr. BROOKS. I said that four-fifths of it had no timber on it, and could see no reason why it should be included in a forest reserve.

Mr. GRAHAM. Would it be practicable to exclude it, or would it not be better to make a circumscribing boundary including those tracts that are useless for any purpose except raising icebergs?

Mr. BROOKS. If you wanted to include every little valley that had timber on it at all and wanted to make them national forests continuous, why of course it would not be practicable to throw out very much of it; but there are one or two tracts of timber. There is one on the east side of Copper River and one on the east side of the Kenai Peninsula. Now, those are the only two worth considering from the standpoint of the national-forest policy; those, of course, could be set apart, and as to the rest of it I do not see that it sub-serves any good purpose to include it.

Mr. GRAHAM. Does it make any difference whether that four-fifths is in or out of a forest reserve?

Mr. BROOKS. It makes this difference: When a man is on Prince William Sound, or is prospecting there, and if he wants to put up a telephone line, cut a trail, or if he wants to do anything, he has to get a permit. The average Alaska prospector is not familiar with that and objects to the cost of putting in a telephone line, and it leads to friction, which it seems to me is unnecessary. If a man wants to cut timber he has got to get a permit, or cut a little wood for building; if he wants to put up a house, he has got to get a permit. When you have such a large area it is impossible to employ enough men to get around and fulfill all these requests and look after them in a reasonable length of time, and the consequence is that the people become dissatisfied and become unnecessarily prejudiced against the forestry policy, which, of course, no one who has studied the question can object to at all; but the including of these areas that have not timber on them seems to me an unfortunate thing, simply from the standpoint of the Alaskan.

Mr. GRAHAM. Just on account of the friction which you say it causes, or that they do not understand it.

Mr. BROOKS. Yes, sir.

Mr. VERTREES. They can not use it without a permit, can they?

Mr. BROOKS. No, sir.

Mr. GRAHAM. But the permit is easy to get, I presume.

Mr. BROOKS. It is, if there was somebody there. But take the forest supervisor—the supervisor of the Washington forest service—he has a representative on the ground, but his office is at Ketchikan, 100 miles away. Suppose this local man wants to refer something to him, it would take a month possibly to get a reply.

Mr. GRAHAM. If there is anything in a name it ought to be easy to get at him at Ketchikan.

The CHAIRMAN. Will you please give him the name of that island near Ketchikan?

Mr. BROOKS. Revillagigedo.

Mr. GRAHAM. If they had been there they would never have reached it.

Mr. VERTREES. Mr. Brooks, as illustrative of Alaska conditions, what are the freight rates in the interior of Alaska the times you have been there?

Mr. BROOKS. They are sending freight into one of the placer camps there now at a cost, I think, of 32 cents a pound; if you pay for packing, it is so much for the packing as well as the provision, and I have known miners to go in there where the cost of supplies was \$1 a pound for everything they took in. That is more than first-class letter rate postage.

Senator FLETCHER. From the States?

Mr. BROOKS. No, sir; from the coast; from the last place you can have it brought up, by steamer or rail. Of course the freights up there around tide water are not high compared with that. In the Fairbanks district freight varies from \$75 to \$100 a ton delivered at Fairbanks.

The CHAIRMAN. On steamboat?

Mr. BROOKS. Yes, sir; and it will cost you from 2 to 25 cents a pound to get it from there out to your claim. So you see the miners have a good deal to contend with, and are anxious to have the railroads encouraged.

Mr. BRANDEIS. Mr. Brooks, referring to page 2831 of the testimony—I do not know whether you have it before you—have you not inadvertently done an injustice to the State of Florida when you state that it is one-seventeenth the size of Alaska?

Mr. BROOKS. Well, I have not figured that out.

Mr. BRANDEIS. It is one-tenth, is it not; 58,000 square miles is one-tenth of 583,000?

Mr. BROOKS. It may be so.

Senator FLETCHER. You want to add another thousand there, making it 59,000, so as to cover the water.

Mr. BROOKS. The comparison that I am most familiar with is comparing it with the State of Texas. When I was asked as to the State of Florida, I did not recall the area.

Mr. BRANDEIS. It is twice the State of Texas?

Mr. BROOKS. It is two and a half times the State of Texas, approximately.

Mr. BRANDEIS. I thought Texas had about 250,000 square miles.

Mr. BROOKS. Yes, sir; and Alaska is 586,000 square miles. It is a little less than 250,000.

Mr. BRANDEIS. Now, I understood you to say that the value which you would put on that coal in the ground was half a cent a pound for the best?

Mr. BROOKS. Half a cent a ton.

Mr. BRANDEIS. Half a cent a ton for the best?

Mr. BROOKS. Yes, sir. I think I made the statement in a general way. I would not say that it was true as to all of it. That is an approximation.

Mr. BRANDEIS. You are familiar, are you not, with the reputation of A. H. Storrs, the consulting engineer of the Morgan-Guggenheim syndicate?

Mr. BROOKS. Yes, sir.

Mr. BRANDEIS. What is his reputation?

Mr. BROOKS. He stands high as a coal-mining engineer.

Mr. BRANDEIS. Now, I suppose when you fixed half a cent a ton as the value in the ground, you fixed that assuming that the land itself were taken at its fair value—the land containing coal, I mean. The whole tract containing the coal was taken by whoever took it whether it sold at its fair value or not?

Mr. BROOKS. Yes.

Mr. BRANDEIS. And what would you deem the value per acre of such land as is included in the Cunningham claims?

Mr. BROOKS. That, of course, depends upon the tonnage.

Mr. BRANDEIS. You are familiar in a general way with that tract which is covered by those 33 claims known as the Cunningham claims, are you not?

Mr. BROOKS. I am familiar with it; at the same time I have very little basis for an estimate; that is, for a tonnage estimate. I made the statement yesterday that in that Bering River field the tonnage would perhaps run from ten thousand to one hundred per acre. That would mean a value of from \$50 to \$500 an acre.

Mr. BRANDEIS. Are you aware of the fact that in the report which Mr. Storrs made to the Morgan-Guggenheim syndicate, which appears in this report, among other things covering page 2336, that Mr. Storrs states that in estimating the cost of mining this coal, including the coal itself, you ought to allow from 2 to 5 cents a ton as a sinking fund for the value of the coal that is taken?

Mr. BROOKS. Yes, sir.

Mr. BRANDEIS. That indicates, does it, that even when he thinks that the Morgan-Guggenheim syndicate would take it that he figured the value of that coal in the ground at least at 2 to 5 cents?

Mr. BROOKS. After he had secured it; yes, sir. I would say, though, that if you offered the average capitalist Alaska coal lands in the Bering River field at this price they would decline it; they would not consider the purchase of land at those prices.

Mr. BRANDEIS. Then, assuming that you had to get a purchaser for it, when the Government is in that happy position that it may retain this land until such time as in the interest of the people it should part with it, either by lease or otherwise, would you not properly take into consideration the real value as such financiers as the Morgan-Guggenheim syndicate saw it when advised by the best coal expert that they can find?

Mr. BROOKS. Of course there is another element that comes into that. In one case we have a field which is entirely undeveloped. Mr. Storrs, as I take it, says that after he has got his property opened up, so that he knows what is there, that then he will charge off from 2 to 5 cents a ton for the coal he takes out. Now, it will probably cost him considerable to do that preliminary work.

Mr. BRANDEIS. Yes; but does he not say perfectly definitely that in addition to the 2 to 5 cents, which represents the using up of the coal, he is allowing the interest and depreciation on the plant, which means, of course, the development which is covered by a different charge?

Mr. BROOKS. I think Mr. Storrs made a very important omission in that statement, because, as you bring it up, I recall having read that report. You will note that he charges depreciation there, I think, of 5 per cent, did he not?

Mr. BRANDEIS. The exact statement that you refer to, I presume, is on page 2336. In giving the cost of mining, he adds, "to this should be added the cost for exhaustion of the land of from 2 to 5 cents a ton."

Mr. BROOKS. Yes, sir.

Mr. BRANDEIS. And an interest and depreciation charge of probably at least 5 cents a ton.

Mr. BROOKS. Now, I am wondering whether Mr. Storrs may not have been mistaken there in the first statement as he evidently was in the second. His investment there—you can figure out—represents about a dollar a ton for the annual production. Now he counts interest and depreciation at only 5 cents.

Mr. BRANDEIS. A ton?

Mr. BROOKS. Yes. Well, now, the depreciation should be at least 6 cents a ton, and the interest alone is 5 cents, so he is out 6 cents right there in his estimate.

Mr. BRANDEIS. You think he has underestimated that amount?

Mr. BROOKS. I think any coal-mining engineer would probably substantiate that.

Mr. BRANDEIS. He ought to have allowed a larger amount?

Mr. BROOKS. Allowed 6 cents.

Mr. BRANDEIS. But it is perfectly clear that he considered 2 to 5 cents a ton goes for the exhaustion of the coal supply?

Mr. BROOKS. Yes, sir; that is after he has developed his field and knows what he has got. That is a very different thing from going out and buying coal and buying some coal and getting a good deal that is not coal land. You see you have got to allow for that, for the uncertainties of mining.

Mr. BRANDEIS. But Mr. Storrs was allowing for that, was he not? Was not this report made not after the Morgan-Guggenheim syndicate had developed the property, but before they had developed the property? In order to determine whether they should, and in order to determine the cost of this coal, he says, in addition to the cost which he there figured, bringing it up to \$1.86 a ton—"to this must properly be added that element which represents the exhaustion of the coal in the ground, namely, 2 to 5 cents, and that other element which represents the depreciation, as well as the interest on the investment."

Mr. BROOKS. Yes, sir; but you see the point is here that he is allowing 2 to 5 cents for every ton he takes out of the ground. Now, you are selling coal lands at an assumed tonnage estimate. You have got to allow at least 50 per cent, if not more, for what you do not know about the amount of coal that is in the ground.

Mr. BRANDEIS. Yes; but he was in that same state of ignorance or relative ignorance.

Mr. BROOKS. No, sir; because he is talking about his ton of coal that is coming out of the ground. He knows exactly how much coal he is taking out, and every ton that is coming out he says his property is worth that much less. He did not recommend that this coal should be bought at 2 to 5 cents a ton.

Mr. BRANDEIS. But he did recommend—that was the purpose at least of his report—to inform them what the real cost on any proper basis would be for that coal, so that they might determine whether that was an investment in which they ought to embark. That was the purpose, was it not, of the report?

Mr. BROOKS. Evidently.

Mr. BRANDEIS. I think that is all I care to ask.

Mr. PEPPER. Mr. Brooks, you and your associates have given, as you have explained, a great deal of care and attention to the study of mineral resources of the United States and Alaska, have you not?

Mr. BROOKS. Of course, my own work is in Alaska; yes, sir. Of course the Geological Survey is engaged in studying the mineral resources of the United States, as well as Alaska.

Mr. PEPPER. And within the limits of what is possible, having regard for the nature of the country and the limits of time, you have made, as it were, an inventory of what the resources of the United States are there in this matter of coal deposits?

Mr. BROOKS. Yes, sir; there have been such estimates made.

Mr. PEPPER. And the United States, having ascertained what of value it possesses in that field, it should, in your judgment, give to the question of the disposal of what it has a degree of careful consideration which approximates the care and consideration given in making up the inventory?

Mr. BROOKS. Yes, sir.

Mr. PEPPER. I mean to say it would be labor lost for you gentlemen to do all that you have done, and are doing, if anything like recklessness of disposal were to ensue upon the ascertainment of what the assets of the Government are out there?

Mr. BROOKS. Well, I do not see that that is a very important matter, whether it is an injustice to us or not. We are here for certain purposes, and we do it.

Mr. PEPPER. I was not thinking of the personal question at all. I was thinking of the labor and expense to the United States that is involved in the prosecution of this very great and important work, which I think should be followed, should it not, by a corresponding degree of care in determining the policy of this position?

Mr. BROOKS. Of course you understand, Mr. Pepper, that in making this inventory, as you call it, that is, the so-called conservation report, it was simply accidental and the result of many years' work, which we carried on simply to find out what the resources were and to help the people in getting that information, and incidental to this there was a large amount of material accumulated, which was summarized recently and published.

Mr. PEPPER. Yes; but there is nothing in your testimony upon which you desire to infer that anything like precipitation or recklessness should characterize the decision of the question how best to dispose of and use that which the inventory shows us to be possessed of. That is true, is it not?

Mr. BROOKS. I certainly would not advocate any recklessness in anything, but if you go to apply it to the Alaska situation, in view of the fact that we have had a coal-land law for ten years and no one has ever gotten any title to any coal land so far, I do not see that there is so much recklessness in it thus far.

Mr. PEPPER. I am referring now not to the question of action under an old law, which seems to be recognized to be inadequate, but to my question that you yourself have touched, namely, What shall be the policy of the Government in the future?

Mr. BROOKS. Naturally, that is a very broad question and an important one.

Mr. PEPPER. You yourself know, do you not, as you have studied these questions and come in contact with people whose minds are working upon them, an extreme contrast between the position of the man whose idea of what is best for the country is to distribute the national domain and let the enlightened self-interest, the individual,

deal with the problem, and at the other extreme the man who wishes to emphasize the importance of government control as respects prices to be paid to the Government, prices to be paid by the consumer, and antimonopoly provision and other restrictions; there is that broad contrast, is there not?

Mr. BROOKS. Yes, sir.

Mr. PEPPER. And as between those two extreme positions there is no difference in point of view as respects the desirability of development?

Mr. BROOKS. No, sir.

Mr. PEPPER. It is all a question of how you are going about it?

Mr. BROOKS. I presume so, with those that have really given intelligent study to the question. Of course there are extremes in all cases. Extremists should not be really entitled to an opinion on the matter.

Mr. PEPPER. Of course; but dealing as a practical man with the situation, there are those two differences of view point? They may be honestly held, but they are differences of view point?

Mr. BROOKS. Yes, sir.

Mr. PEPPER. And whether you say one man stands for exploitation and the other man for conservation is a mere question of terms, but there is that difference, is there not?

Mr. BROOKS. I do not know that those two terms are entirely antagonistic—exploitation and conservation.

Mr. PEPPER. Perhaps not.

Mr. BROOKS. Because there can be exploitation made all along those lines which are entirely in accord with this conservation idea.

Mr. PEPPER. I am not particular about the terms. There are two positions opposed to one another, and you can give one name to one position and one name to another. That is so, is it not?

Mr. BROOKS. Yes, sir.

Mr. PEPPER. The point that I wanted to direct your attention to is this: That as between those two positions there is no difference respecting the desirability of prompt development; it is all a question of how best the development may take place.

Mr. BROOKS. Yes, sir.

Mr. PEPPER. Now, with respect to the settlement of the question of how best it may take place, I understand the net result of your testimony to be, in the first place, that in guiding yourself to a determination you are going to practically neglect those estimates on the one hand of how long our coal supply will last at the present rate of consumption and on the other hand how long our coal supply will last at the present increase of the rate of consumption?

Mr. BROOKS. Yes, sir.

Mr. PEPPER. Those are negligible, are they not, as a practical matter?

Mr. BROOKS. I think so.

Mr. PEPPER. Any man who states one as a factor for consideration ought to couple it with the statement of the other, and then advise action which will disregard both?

Mr. BROOKS. Well, that is rather a complex thought that you have presented.

Mr. PEPPER. Well, it is just like deciding which shell the pea is under and then guessing the other two, is it not?

Mr. BROOKS. It seems to me if you desire to prevent waste, that that is the only thing to be considered, after all—preventing of waste.

Mr. PEPPER. Exactly. In other words, you look at the problem in the light of things that you can see, and you neglect as really a thing not susceptible of an approximate estimation how soon the coal supply is really going to be exhausted?

Mr. BROOKS. I think that is a fair statement of it.

Mr. PEPPER. And is it not true, Mr. Brooks, that the net result of your testimony on the second important point is this, that when you actually come to the question of how you are going to dispose of the public coal land you want to decide between a policy of leasing and a policy of sale, always keeping in mind that the first consideration is the good of the community in which the coal land is situated, to wit, Alaska.

Mr. BROOKS. Yes, sir.

Mr. PEPPER. And the good of the people of that community, to wit, the Alaskans.

Mr. BROOKS. Yes, sir.

Mr. PEPPER. And you emphasize, do you not, the thought that the returns to the Government from the exploitation of the Alaska coal fields should not be taken out of the country but that the United States should recognize its responsibility to build up that community with the proceeds of its own resources?

Mr. BROOKS. I do.

Mr. PEPPER. And as between lease and sale you recognize the importance of taking into consideration in fixing your price, a variety of elements, do you not; in the first place the difference in grades of coal?

Mr. BROOKS. Yes, sir.

Mr. PEPPER. As between lignite on the hand and the higher grades of anthracite and bituminous coal?

Mr. BROOKS. Yes, sir.

Mr. PEPPER. And the subgrades in between?

Mr. BROOKS. Yes, sir.

Mr. PEPPER. That is one point?

Mr. BROOKS. Yes, sir.

Mr. PEPPER. And then the condition of the particular area under investigation; for instance, the folded pockets, etc.?

Mr. BROOKS. Yes, sir.

Mr. PEPPER. And then the question of not merely the qualities of the coal and the condition of the land, but you must take into consideration the advantage to the developer of the low charges of the present as compared with the larger returns to the grantor in the future.

Mr. BROOKS. I do not think I catch that question.

Mr. PEPPER. To encourage development you may well make a smaller charge at the start, should you not, than that which you ultimately made?

Mr. BROOKS. Yes, sir. The one point about that is if you have an entirely undeveloped coal field they do not know what conditions are going to govern it. Now, just as soon as the coal field is developed—one mine opened—you know something about it, and you know what you can count on, and therefore the charge should be increased.

Mr. PEPPER. But, as a practical matter, is not that question of price more easily and more definitely dealt with both to the Government and the developer under a leasing system, with the possibility of readjustment, than it is under a sale of a freehold interest, where you have got to take your stand in advance and take chances that it will work out fairly?

Mr. BROOKS. I presume in a large way that would be true; yes, sir. Of course, in Alaska you would have to put your price low anyway, as compared with what it would be in the States.

Mr. PEPPER. Whereas a classified system of rental returns, having regard to all the elements that I have mentioned with possibilities of readjustment at intervals, is a thing which makes in favor of the leasing as against the sale system; is that not so?

Mr. BROOKS. Of course, to get anybody to lease you would have to have a lease extending to a period of years, say, thirty years.

Mr. PEPPER. Equivalent to the length of a marketable bond?

Mr. BROOKS. Yes, sir. You have got to fix your royalty for that period of thirty years absolutely, and no man would sign a lease and have the matter of royalty uncertain; so you have got to decide in advance what your royalty is worth.

Mr. PEPPER. It is not within your province, but do you happen to know whether in point of fact there is pending now a water-power act providing for leases for limited terms with revaluations on royalties during the term?

Mr. BROOKS. I have heard of such a thing, but I do not know of it positively. I think that a man would view with suspicion—the average capitalist—a leasehold by which his royalty would be increased and was not absolutely fixed in advance.

Mr. PEPPER. You will understand, without the least desire to disparage your testimony on that point; you are a scientific man and have not given consideration to market questions and the salability of bonds and that sort of thing.

Mr. BROOKS. No, sir.

Mr. PEPPER. Now, in respect to this question of monopoly, it is a fact, is it not, Mr. Brooks, that under the leasing system it is a much easier practical proposition to control a monopoly feature and the price to the consumer than it is after the Government has once parted with the title to the land?

Mr. BROOKS. I presume it could be made a part of the terms of the new lease. Is that what you mean?

Mr. PEPPER. Yes, sir.

Mr. BROOKS. I presume that could be done.

Mr. PEPPER. And is it not true that that very important part of your testimony which dealt with the annual saving to the Government in the sales of coal was in part based upon the assumption that there would not be a monopoly in the Alaska coal, because otherwise there would not have been any such reduction as you suggested?

Mr. BROOKS. There are two coal fields in Alaska which produce this high-grade coal. I think the danger is not a monopoly, but that those two fields would be developed beyond the market. I think the danger is, perhaps, the other way for the present.

Mr. PEPPER. But it is true, is it not, that in the event of monopolistic control of these fields the possible saving to the Government that you made such a point of would drop out of consideration?

Mr. BROOKS. It might but you would also have the competition which would exist between the eastern fields and the western fields.

Mr. PEPPER. Yes; but that competition would not be a competition which would represent anything like the saving to the Government which you suggested in your calculation.

Mr. BROOKS. It would not be so far different.

Mr. PEPPER. The Pocahontas coal can be delivered on the Pacific coast at a certain figure.

Mr. BROOKS. Yes, sir.

Mr. PEPPER. And the only competition with the Alaska coal was a competition with Alaska monopoly. It would not require a very great underselling of the eastern coal to give to the syndicate the market and save very little to the Government.

Mr. BROOKS. The difficulty is that you would find it exceedingly difficult to reduce your cost of mining in Alaska, because the conditions are such that they are adverse. The figures I have made to arrive at this conclusion are minimum figures.

Mr. PEPPER. Then the estimate that you made of the saving to the Government, based on the cheapness of the Alaska coal on the coast, must be subjected to revision?

Mr. BROOKS. No, sir; because I simply took the consumption by the navy; the navy is about 150,000 tons; but in addition to that we have the trans-Pacific coal and the coal used by other government ships; so I think it would aggregate about that figure, half a million dollars.

Mr. PEPPER. But that estimate was based upon the selling price of Alaska coal which you specified in your testimony.

Mr. BROOKS. Yes, sir.

Mr. PEPPER. And that was a competitive price?

Mr. BROOKS. A competitive price, yes, sir.

Mr. PEPPER. As between Alaska purchasers—

Mr. BROOKS. As between Alaska purchasers and purchasers from the east coast.

Mr. PEPPER. But it involves the question of competition inter se between Alaska purchasers.

Mr. BROOKS. I can see no reason why there should not be competition in Alaska. The only monopoly that might exist under present laws, at least, would be the monopoly of transportation, and the transportation charges are of course fixed by the Government, so that if the Government has a mind to take hold of the situation why they could present a monopolistic control of the coal fields.

Mr. PEPPER. Whether or not this control can be accomplished, your estimate was based upon the supposition that it would be accomplished?

Mr. BROOKS. Yes, sir; approximately. Of course I had to go on what I had.

Mr. PEPPER. Would you mind, for my information, telling me where the copy of that parliamentary report may be had—I mean if it is not your private property—in what place can it be found?

Mr. BROOKS. At the present time it is in my office. I can send it back to the Congressional Library.

Mr. PEPPER. It may be had in the library?

Mr. BROOKS. Yes, sir.

Mr. PEPPER. Just one or two questions more. In the first place, about this Chugach Forest Reserve. The chairman asked you a

question or made a remark a while ago to the effect that some one was overlooking the fact in speaking of the retardation of the coal development that certain of these coal fields were included in the forest reserve. It is a fact, is it not, that the inclusion of a field in a forest reserve does not close it to mineral entry?

Mr. BROOKS. Yes, sir.

Mr. PEPPER. The remark is a misapprehension of the situation, is it not?

Mr. BROOKS. I presume so.

Mr. PEPPER. Then, with regard to the portion of the forest reserve which covers land not covered with timber, was it your observation that the inclusion of that had done injustice or worked hardship to homesteaders, those who are excluded from entry in a forest reserve?

Mr. BROOKS. It seems to me it would have tended to discourage them. I think Mr. Langille's presentation of it is a very good one. He simply pointed out that anything which discouraged the pioneer was unfortunate.

Mr. PEPPER. Yes; but that of course has reference to those lower levels where homestead entries are possible.

Mr. BROOKS. Of course it has reference not only to homestead entries but to the men who are engaged in developing mineral resources, because the same thing applies to them. They can be hampered to a certain extent when they are in the forest reserve.

Mr. PEPPER. That is the matter of friction, etc., that you referred to in answer to Mr. Graham's question?

Mr. BROOKS. Yes, sir.

Mr. PEPPER. But as a matter of right the reserve has no effect on the mineral entrymen?

Mr. BROOKS. No, sir; not on the mineral entrymen.

Mr. PEPPER. I did not gather from your testimony that you are opposed to the policy of the National Forest Reserve in Alaska, but merely that you think that the boundaries of this one should be revised.

Mr. BROOKS. I think that certain of the boundaries should be revised. I rather question whether it is worth while in this particular case—whether a forest reserve is worth while, but I confess I have not gone into it far enough to make a definite statement.

Mr. PEPPER. Perhaps you would think differently if you took as much interest in wood as you do in stone.

Mr. BROOKS. I do not know; I have paid a good deal of attention to it. One of my hobbies is agriculture. The western side of the Kenai Peninsula is agricultural land. Very much to my chagrin I found out recently that that was in a forest reserve, and a homesteader going in there and taking up this agricultural land would have to make his own surveys, and that was the thing which made me wonder whether it was worth while to include that, because the timber is not worth very much.

Mr. PEPPER. In other words, there ought to be a paring down of a reserve of that sort in order that, as exact knowledge of field conditions come in, you may cut your reserve to fit the needs of the timber supply.

Mr. BROOKS. Yes, sir.

Mr. PEPPER. But in the meantime, and speaking entirely from your knowledge of that condition, no injustice has been done homesteaders by the creation of this reserve?

Mr. BROOKS. I could not say as to that. . I am not familiar enough with the local conditions.

Mr. PEPPER. The great part of that four-fifths area is suitable only for, say, cliff dwellers or primitive people of that sort.

Mr. BROOKS. Well, Prince William Sound is included in the forest reserve. Prince William Sound has a population now of possibly four or five thousand people. Now, perhaps I am putting that too high; I figured Cordova too high—well, say 3,000, to be on the safe side. It is in the forest reserve. Those people are engaged there in mining, in commercial factories, and they are more or less hampered by the fact that they are living in a national forest. Now, I would raise the question with the Forest Bureau, if I were asked as to whether it is worth while to include that, because there is so little timber there.

Mr. PEPPER. So that—and I am not trying to make a verbal point, but really to decide an important question—is there not in the talk about a four-fifths area of that, a certain implication of injustice to homesteaders which does not correspond broadly to the real fact in the field?

Mr. BROOKS. Well, I think this model shows it plainly, because there is a large part of that area in the snow fields.

Mr. PEPPER. And as I say, suitable only for the habitation of cliff dwellers, or people of that sort—and you do not find any of them in Alaska?

Mr. BROOKS. No, sir.

Mr. PEPPER. Not even in the town of Nelson?

Mr. BROOKS. No, sir.

Mr. BRANDEIS. Mr. Brooks, will you be so good as to furnish the committee with a list of all your publications on the subject of coal lands of Alaska, and call attention in connection with them to all valuations that you have made, if any, as to the coal in the ground.

Mr. BROOKS. I would say that I have made no valuations in any of our official reports on the coal in Alaska. We have presented simply tonnage.

Mr. BRANDEIS. Is there no publication of yours, official or unofficial, in which you have made valuations?

Mr. BROOKS. Yes, sir; there was an article of mine in the Review of Reviews, which I published last year, in which in attempting to compare the Alaska coal and gold supply, I said: "Well, we will put the coal at a dollar a ton," never for a moment dreaming that anybody would think that I would value coal at a dollar a ton in the ground, which would put the poorest coal land at \$10,000 an acre, and apparently it was so accepted. Now, my idea was that the coal in the ground was of no value, and the gold in the ground was of no value. If you are going to figure profits, you will have to figure the cost of getting it out and what you could sell it for. You could not do that in the case of gold, because it costs more to get it out than it is worth. So I took coal at its selling value and said, "There are 15,000,000,000 tons of coal in Alaska. We will estimate those at \$1 a ton—figuring not on any kind of coal at the pit's mouth; some of it is not worth anything at all; that is, would not be for centuries to come, and others would be. So I put it in in that way, and I have always regretted it. It has been entirely misinterpreted. It has been understood by people who do not understand it as my estimate of the coal in the ground, which is absolutely

Mr. BRANDEIS. You refer, I suppose, to the records that he returned in pursuance of your call on Monday morning, September 20, at 20 minutes past 9?

Mr. CHRISTENSEN. And others that he returned on Saturday.

Mr. BRANDEIS. And the others that were returned on Saturday; those that were returned through Stoner?

Mr. CHRISTENSEN. Yes, sir.

Mr. BRANDEIS. You had evidence there, and, as matter of fact, there were so many there that Mr. Stoner had to go up there on two occasions at least, and spend at one time two hours and another time one hour or more, while Glavis was segregating the government property from his private papers; isn't that the fact?

Mr. CHRISTENSEN. That is what Stoner stated.

Mr. BRANDEIS. I say that Stoner stated that—that that information is what you had?

Mr. CHRISTENSEN. Yes, sir.

Mr. BRANDEIS. And you had also some other information that even that had been done after these deliveries had been made through Stoner, and personally on the 20th of September, that there came to you from two sources additional documents; in the first place, some which had inadvertently been sent, as it appeared, to the Forestry Service, and still another lot of documents which Mr. Glavis apparently found and delivered to you on November 5; a large number of documents put up in a bundle, wasn't it?

Mr. CHRISTENSEN. Yes, sir.

Mr. BRANDEIS. Were not all of those instances almost sufficient to be deemed by you as evidence of a possibility of a habit of having documents in his personal possession?

Mr. CHRISTENSEN. I have never considered it that way; I do not think that I ever thought of it that way.

Mr. BRANDEIS. Even if you did not think of it as a possibility, did it not suggest itself as a habit? Did it not suggest itself to you that there was a possibility when you found, if you did find, these letters there that that was the explanation?

Mr. CHRISTENSEN. No; I had fully concluded that he had these letters willfully, because they appeared in Collier's—that is, after they appeared in Collier's. Of course before that there was some doubt.

Mr. BRANDEIS. But when they appeared in Collier's you were certain that Glavis had the letters?

Mr. CHRISTENSEN. Yes; I became convinced that he had the letters.

Mr. BRANDEIS. You knew, did you not, that the Forestry Service had an immense number of copies of letters in these Alaska cases which had been sent them by Glavis?

Mr. CHRISTENSEN. I did not know about the "immense;" I knew of a letter in which Glavis stated he had transmitted a large number of copies.

Mr. BRANDEIS. Yes; a very large number.

Mr. CHRISTENSEN. Well, I do not know whether it was very large. He said a large number, his letter stated.

Mr. BRANDEIS. Did it not seem to you as quite possible that the Forest Service might have copies of these documents, that Collier's might have gotten them from some one in the Forestry Service?

Mr. CHRISTENSEN. Yes; that was suggested.

AFTER RECESS.

The committee reassembled after recess at 2 p. m.

The CHAIRMAN. The committee will please come to order. The examination will proceed.

Mr. VERTREES. Mr. Chairman, before proceeding with the examination, I desire to call attention of the committee to two papers that were called for by Mr. Brandeis on yesterday. One was the reply—or, rather, he called for one, but I present two—one was the reply of the Attorney-General to the district attorney in reference to these criminal prosecutions. I have that reply and also a letter written the same date by the Attorney-General to the Secretary of the Interior bearing on the same question and stating the same thing. I presume he would want that also. I offer them and ask that they be printed.

The CHAIRMAN. They will be admitted.

(The letters are as follows:)

146882.]

JANUARY 15, 1910.

ELMER E. TODD, Esq.,

United States Attorney, Seattle, Wash.

SIR: I have given very careful consideration to your letter of 30th ultimo with respect to the request made upon you by the Chief of Field Service at Washington to present to the grand jury evidence against L. R. Glavis tending to show that he embezzled certain records from the Government's files in the office of the field chief at Seattle, Wash., in violation of section 1 of the act of March 3, 1875.

On a consideration of the facts contained in your letter and in the communication of Mr. Christensen, I concur in the views which you express, that it is not probable that any evidence could be secured on which to base indictments; and I should advise that, for the present at least, no action be taken by you.

Respectfully,

GEORGE W. WICKERSHAM,
Attorney-General.

OFFICE OF THE ATTORNEY-GENERAL,
Washington, D. C., January 15, 1910.

The SECRETARY OF THE INTERIOR.

SIR: The United States attorney at Seattle, Wash., transmits to me a copy of a letter received by him from A. Christensen, chief of the seventeenth field division of the General Land Office, at Seattle, Wash., in which he, acting under instructions of the Chief of the Field Service at Washington, requests that the United States attorney present to the grand jury evidence against L. R. Glavis, tending to show that on or about September 18, 1909, he embezzled certain records from the Government's files in the office of the field chief at Seattle, Wash., in violation of section 1 of the act of March 3, 1875.

The United States attorney, in his letter, copy of which I inclose for your information, expresses the opinion that the evidence submitted is not sufficient to establish the offense, and further advises against acting upon the suggestion of Mr. Schwartz with respect to subpoenaing the editor of Collier's Weekly, and other persons connected with that paper, before the grand jury.

For the reasons stated by the attorney, I concur in the opinion which he expresses; and I have accordingly directed that, for the present at least, he take no further proceedings in the matter.

Respectfully,

(Signed)

GEORGE W. WICKERSHAM,
Attorney-General.

Mr. VERTREES. Mr. Christensen, will you please resume the stand.

TESTIMONY OF ANDREW CHRISTENSEN—Resumed.

Mr. BRANDEIS. Mr. Christensen, in examining you yesterday I called your attention to the fact that the telegram, your telegram to Mr. Schwartz, which appears on page 2809 of the record, and is embodied in the letter of February 8, contained three misstatements: First, that these letters had been found in a box which you had broken open, whereas it was not open, not nailed, and consequently not broken open; secondly, that you stated that it was in the grand jury room, whereas it was not in the grand jury room, but in the storeroom; and in the third place, that you stated in that telegram that you had found all of the missing letters referred to in the letter to Glavis of September 20, excepting the January 15, 1908, letter, whereas two letters which you allege you had found were letters that were not referred to, two of the so-called 24. I also asked you whether or not in any subsequent communication, in any letters which you had sent to Mr. Schwartz, you corrected those misstatements, and I understood you to say that you did not. Is that a fact?

Mr. CHRISTENSEN. I did not call his particular attention to that; it never occurred to me that they were misstatements.

Mr. BRANDEIS. Well, when did it first occur to you that those three misstatements were contained, or any one of those three misstatements, were contained in that telegram and the letter confirming it?

Mr. CHRISTENSEN. When I arrived in Washington.

Mr. BRANDEIS. When—I was asking you when?

Mr. CHRISTENSEN. That was February 23—

Mr. BRANDEIS. That was the first time?

Mr. CHRISTENSEN. I had a talk with Mr. Schwartz and Mr. Rasch and I called their attention at that time to the fact that I should have said "in the storeroom" instead of the "grand jury room," that it was simply overlooked—that I assumed that I was in the grand jury room because of the tables and chairs that were in there.

Mr. BRANDEIS. Now, when did you first call their attention to the fact that you had not broken open the box, but that it was open when you got to it?

Mr. CHRISTENSEN. I do not know that that is a misstatement. It was necessary to remove one board in order to get into the box, and, really, yesterday, if I admitted that it was not broken open I think I shall have to change my statement and state that it was in the nature of a breaking open in order to get in there to get the things out. I explained to them even at that time, I think, that possibly it might be said that I did not break open this particular box. I am not sure whether I brought that up or not.

Mr. BRANDEIS. You are an attorney at law?

Mr. CHRISTENSEN. Yes, sir; and I believe you are.

Mr. BRANDEIS. A graduate of George Washington University?

Mr. CHRISTENSEN. Yes, sir.

Mr. BRANDEIS. And have made some study of the English language?

Mr. CHRISTENSEN. Yes, sir.

Mr. BRANDEIS. I would ask you whether, in your opinion, that which you did when you went there would be ordinarily understood by people as being a breaking open of the box?

Mr. CHRISTENSEN. I think ordinarily, in the legal terms, any removal or breaking whatever, be it ever so small, is considered breaking. It is the common-law rule, I think.

Mr. MADISON. That would apply to burglary, but would it apply to the opening of a box?

Mr. CHRISTENSEN. It means breaking open—I do not know that it would.

Mr. MADISON. Have you not, as a matter of fact, simply given the definition of breaking open in burglary?

Mr. CHRISTENSEN. I suppose that is it.

Mr. BRANDEIS. Do you wish to be understood, Mr. Christensen, that in your opinion the language which you used in that case, in this instance, would properly convey to the hearer or the reader the facts as they were?

Mr. CHRISTENSEN. It would have been a very difficult matter to set forth briefly in that telegram the exact facts in the case. As I said yesterday, it was prepared in a hurry, and a matter of that kind can be very easily overlooked.

Mr. DENBY. You say you did pull a board off and pull the nails out, or break it open?

Mr. CHRISTENSEN. Yes, sir; the nails in one of the boards was slightly fastened and it was necessary for me to take a hold of it and jerk it off.

Mr. DENBY. And there was one board without any nails in it?

Mr. CHRISTENSEN. Yes, sir; there was one lying partly over the opening, and that was pushed away, set aside.

Mr. BRANDEIS. Then your explanation of this possible unusual use of the word "breaking open" is that you wrote the telegram in a hurry and did not carefully consider your language, because it was a telegram; is that your explanation?

Mr. CHRISTENSEN. That is practically it; yes, sir.

Mr. BRANDEIS. Now, will you kindly look at the letter of the same date, February 8, which appears to bear evidence of very great care in preparation, and say whether you did not there use, not only in quoting the telegram, but in the subsequent description of what happened, a more detailed description of what happened, whether you did not there describe the act in which you were engaged as a breaking open of the box?

Mr. GRAHAM. What page is that?

Mr. BRANDEIS. Page 2809.

Mr. CHRISTENSEN. We did break open the box, as I stated in this letter.

Mr. BRANDEIS. What box did you refer to that you say you stated in that letter?

Mr. CHRISTENSEN. One box was in the first room, or second room, we went, and one board was pulled off there in order to determine what was in the box. Then the other box, containing a phonograph of some kind, was also broken open, and the two barrels were broken open.

Mr. CHRISTENSEN. No, sir.

Mr. McCALL. Had you referred this matter to the district attorney?

Mr. CHRISTENSEN. Yes.

Mr. BRANDEIS. You did not refer it to the district attorney until very late in December, did you?

Mr. CHRISTENSEN. I referred the case to him on November 30.

Mr. BRANDEIS. But before that time you had been very diligent in the pursuit of the case, had you not?

Mr. CHRISTENSEN. Yes; Mr. Sheridan and Mr. Pugh were investigating up to that time.

Mr. BRANDEIS. And your investigation continued even after the time that you referred the legal question to the United States attorney?

Mr. CHRISTENSEN. No; I do not think that we continued the investigation after that.

Mr. BRANDEIS. Did it ever occur to you to inquire of the Forestry Service how Colliers had obtained copies of those letters—this coordinate branch of the Government?

Mr. CHRISTENSEN. Some of the officials of the Forestry Service had already suggested they did not have any of the originals belonging to the Land Office; they stated they had a number of copies, but never admitted that they had any originals.

Mr. DENBY. I was going to ask what the date of the publication of Collier's was?

Mr. CHRISTENSEN. December 4 and 18.

Mr. DENBY. Then before they appeared in Collier's you had laid the matter before the district attorney, had you?

Mr. CHRISTENSEN. Yes, sir.

Mr. McCALL. I understand you to say that you had a conference with the district attorney in September.

Mr. CHRISTENSEN. In September; yes, sir.

Mr. McCALL. Did I understand that correctly?

Mr. CHRISTENSEN. Yes, sir; that was before this investigation was commenced.

Mr. McCALL. It did not relate to these papers?

Mr. BRANDEIS. It did not relate to these papers; it related to those papers which were delivered on Monday morning, September 20.

Mr. MADISON. Were you ordered by your superiors to endeavor to locate those papers?

Mr. CHRISTENSEN. I was not, but Mr. Sheridan was. I had a letter here yesterday from Mr. Schwartz to Mr. Sheridan—

Mr. MADISON. In which he was instructed to do it.

Mr. CHRISTENSEN. Yes, sir; in which he was instructed.

Mr. MADISON. What connection did you have in the investigation?

Mr. CHRISTENSEN. I was in charge of the division there, you might say, and I naturally took an interest in it and assisted Sheridan all I could.

Mr. MADISON. And you and Mr. Sheridan were the parties who had charge of the investigation; that is, of endeavoring to run down and find those papers?

Mr. CHRISTENSEN. Yes, sir.

Mr. MADISON. And to find who had taken them?

Mr. CHRISTENSEN. Yes.

Mr. BRANDEIS. You also stated that you had never been in the grand jury room before?

Mr. CHRISTENSEN. Yes, sir.

Mr. BRANDEIS. And that you had never seen these effects in the grand jury room?

Mr. CHRISTENSEN. Never had.

Mr. BRANDEIS. Now, let me see whether I can not refresh your recollection. Do you remember some books of Spaulding's, stenographic notebooks of Spaulding's, in which were contained notes of these letters that Dennett wrote to Schwartz and of which Spaulding gave copies to Glavis?

Mr. CHRISTENSEN. I have heard of those notebooks. I do not think that I ever saw them.

Mr. BRANDEIS. When did you first hear of those notebooks?

Mr. CHRISTENSEN. I think the first time I heard of them was when Mr. Schwartz arrived in Seattle from Washington after Glavis had been dismissed.

Mr. BRANDEIS. Immediately after Glavis had been dismissed?

Mr. CHRISTENSEN. Yes, sir; immediately.

Mr. BRANDEIS. Do you not recall undertaking a search to find those note books?

Mr. CHRISTENSEN. I do not.

Mr. BRANDEIS. Do you not recall applying to Mr. Spaulding to aid you in finding those notebooks?

Mr. CHRISTENSEN. No; I do not recall that.

Mr. BRANDEIS. Do you recall going to Mr. Spaulding to get the key to the grand jury room, and going up with Mr. Spaulding into the grand jury room and looking about to see whether you could not find the notebooks there?

Mr. CHRISTENSEN. No, sir; I do not recall it.

Mr. BRANDEIS. Do you not recall asking Mr. Spaulding whose effects those were, and his telling you that they were Glavis's effects, and that Glavis had had permission to leave them there; and then after you looked around there, going down again and not finding the Spaulding notebooks?

Mr. CHRISTENSEN. I do not remember anything about that incident at all.

Mr. BRANDEIS. You have no recollection of ever exerting yourself to find those Spaulding notebooks?

Mr. CHRISTENSEN. I do not remember of ever having tried to find them. I can not recall it at all.

Mr. BRANDEIS. And this incident that I am telling you of does not awaken any recollection in your mind?

Mr. CHRISTENSEN. No, sir; I do not remember whether I ever looked for them or not. I can not recall it now.

Mr. BRANDEIS. When was it that you first realized that your charges that Glavis had concealed these papers in that box were unfounded?

Mr. CHRISTENSEN. What was that?

Mr. BRANDEIS. When did you first realize that the charge that you had made that Glavis had concealed these papers in that box was unfounded?

Mr. CHRISTENSEN. That has never been established to me yet, and I believe yet that they were put there as the evidence shows.

Mr. BRANDEIS. Believe that they were put there by whom?

Mr. CHRISTENSEN. By Mr. Glavis.

Mr. BRANDEIS. Put there by yourself?

Mr. CHRISTENSEN. They were not put there by myself.

Mr. BRANDEIS. You believe they were put there by Mr. Glavis?

Mr. CHRISTENSEN. That is my conviction and that is what the evidence shows, I think.

Mr. BRANDEIS. What did Mr. Kennedy tell you on the subject?

Mr. CHRISTENSEN. He told me a good many things. He said he did not put them in there.

Mr. BRANDEIS. What else did he tell you about that box?

Mr. CHRISTENSEN. He told me that he had thrown several things in there, books and papers.

Mr. BRANDEIS. Is that the way he expressed it to you?

Mr. CHRISTENSEN. I can not say just how he expressed it to me.

Mr. BRANDEIS. Just tell us as well as you can just how he expressed it and everything that he told you?

Mr. CHRISTENSEN. He was trying to recall to Mr. O'Neill—it was a conversation between Mr. O'Neill and himself, in which he tried to recall to Mr. O'Neill that when he went to move the books that several things were lying around on the floor, some books, and that he picked up everything and threw them into the box; put them into the box, and helped the janitor move them.

Mr. BRANDEIS. What else was there that he said?

Mr. CHRISTENSEN. I do not know that there was anything else.

Mr. BRANDEIS. Did he not tell you and did you not hear from him the conversation, that he brought back that key, and that Glavis had never had the key from that day on, that 23d of September, to the date?

Mr. CHRISTENSEN. Yes, sir; I think I heard him tell that he returned the key.

Mr. BRANDEIS. You heard him tell that?

Mr. CHRISTENSEN. Yes, sir.

Mr. BRANDEIS. And that Mr. Glavis had never had it?

Mr. CHRISTENSEN. What do you mean by that?

Mr. BRANDEIS. I mean after that time?

Mr. CHRISTENSEN. Yes, sir; I think he told him that.

Mr. BRANDEIS. That Glavis had never had that key after these things had been thrown into that box?

Mr. CHRISTENSEN. I do not know whether he had or not.

Mr. BRANDEIS. Did you not hear—I am asking you whether you did not hear Kennedy say that?

Mr. CHRISTENSEN. I do not think that I heard Kennedy say that. He would not have any object in saying that, I do not think.

Mr. BRANDEIS. Did not Mr. Kennedy say in your presence that O'Neill this, that he carried back that key on the morning of the 24th of September?

Mr. CHRISTENSEN. Yes, sir.

Mr. BRANDEIS. That he said?

Mr. CHRISTENSEN. Yes, sir.

Mr. BRANDEIS. And he also said that he carried it back immediately after Glavis left for the East?

Mr. CHRISTENSEN. I think so.

Mr. MADISON. And that investigation continued beyond the time when these publications appeared in Collier's?

Mr. CHRISTENSEN. No, sir; I do not think we continued the investigation after that, but it was first presented to the United States attorney. The original letter to him was prepared by Mr. Sheridan and Mr. Pugh and signed by myself, and he did not take any action on that; he was out of the city most of the time during the month of December, and he did not consider the report until the latter part of December, and on December 2 he wrote to the Attorney-General.

Mr. MADISON. You say, then, that you ceased the investigation after you had turned the matter over to the district attorney?

Mr. CHRISTENSEN. No further action was taken after that, because we exhausted all our efforts at that time.

Mr. MADISON. You had not gone up to this grand jury room and into this storeroom?

Mr. CHRISTENSEN. Yes, sir; that was not suggested. I did not know anything about the grand jury room at that time.

Mr. MADISON. You were continuing the investigation when you went up there later—what was the exact date of your going into the storeroom and finding these papers?

Mr. CHRISTENSEN. February 8.

Mr. MADISON. You were continuing the investigation at that time, were you not?

Mr. CHRISTENSEN. No, sir; not on these letters. My reason for being there was that this committee had called for other papers, and it was suggested that those boxes should be looked into.

Mr. MADISON. You wanted it understood that you turned the matter over to the district attorney, that you had ceased investigation, and did nothing more toward trying to find out who had those papers?

Mr. CHRISTENSEN. Yes.

Mr. GRAHAM. How soon after you took possession of the office did you come to the conclusion that Glavis had unlawful possession of some of these papers?

Mr. CHRISTENSEN. I came to the conclusion—why, that was not until after the investigation had started.

Mr. GRAHAM. Put it in dates, please, if you can. About what date was it that you came to the conclusion that he was unlawfully holding some of the papers?

Mr. CHRISTENSEN. It was some time after the investigation was directed by Mr. Schwartz—some time after October 23.

Mr. GRAHAM. About how soon after that would you say?

Mr. CHRISTENSEN. Probably five or six days—I do not know.

Mr. GRAHAM. It would be in October some time, would it not?

Mr. CHRISTENSEN. Some time in October.

Mr. GRAHAM. That you reached the conclusion that he was unlawfully holding some of the government papers?

Mr. CHRISTENSEN. Yes.

Mr. GRAHAM. From that time on you devoted your energy and attention to finding evidence to sustain the view you had taken?

Mr. CHRISTENSEN. Yes.

Mr. GRAHAM. That is, you had reached the conclusion that he was guilty at that time, and from that time on you devoted your time and attention to finding evidence to prove that he was?

Mr. CHRISTENSEN. Yes, sir.

Mr. BRANDEIS. That that description which Kennedy gave of the condition of the things in that room was correct, did he not?

Mr. CHRISTENSEN. I believe so, as far as I can remember it.

Mr. BRANDEIS. Well now, you found certain other property there?

Mr. CHRISTENSEN. Yes, sir.

Mr. BRANDEIS. Which you stated to be government property, in that box?

Mr. CHRISTENSEN. Yes, sir.

Mr. BRANDEIS. What was the nature of that property?

Mr. CHRISTENSEN. I showed that to you in there this morning.

Mr. BRANDEIS. I am asking you. You may refer to it, of course, to refresh your recollection, it is on page 2811.

Mr. CHRISTENSEN. There are so many pieces.

Mr. BRANDEIS. I thought possibly you could describe it.

Mr. CHRISTENSEN. No; it would be impossible to do it, because there are so many different things there. Everything that appeared to have any relation to the office and to have been used officially I considered as official matter and took it out of the box.

Mr. BRANDEIS. That is, you headed this as being a list of letters—this is on page 2811—"A list of letters, papers, books, and other government property found by G. W. O'Neill and A. Christensen in a box belonging to L. R. Glavis among his personal property in room 405, Federal Building, Seattle, Wash., February 8, 1910."

"One roll of legal cap paper, on one sheet of which are notes made in reference to certain cabins.

"July field programme, 1909, Forestry Service.

"Copy of the Use Book, 1908, Forestry Service."

Did you think that was government property, Mr. Christensen?

Mr. CHRISTENSEN. Yes, sir.

Mr. BRANDEIS. They are distributed quite widely by the Government, are they not, to anyone who is interested in the subject?

Mr. CHRISTENSEN. Yes, sir; but I considered it official matter.

Mr. BRANDEIS. I mean what reason did you have to consider it so?

Mr. CHRISTENSEN. For the reason that it was an official publication and was used in connection with the office.

Mr. BRANDEIS. We use many things here that we do not consider government property. "Copy of U. S. Geological Survey 9. 9. 15 containing notes on Alaska and other topics." Did you think that was ordinary government property, which Glavis was embezzling at that time?

Mr. CHRISTENSEN. It appeared that way.

Mr. BRANDEIS. It did seem so to you, did it? Well, here is another thing: "One Western Union book of blank forms." Did that constitute embezzlement of government property, you thought?

Mr. CHRISTENSEN. That can be used in the office, and might have been secured by him in his official capacity.

Mr. BRANDEIS. Well, it might or it might not. Were you not rather assuming on his personal property when you took that away from him?

Mr. CHRISTENSEN. Well, I don't know about that.

Mr. BRANDEIS. Well, there seems to be another book of Western Union blanks in that long list of government property. "And on-

copy of Northern Navigation Co.'s line time-table." Do you think that is especially government property?

Mr. CHRISTENSEN. That, you will find on the original list, was crossed out; that was marked returned.

Mr. BRANDEIS. Oh, that was crossed out? "1. Rand, McNally & Co.'s map of Alaska." Are you sure that was government property?

Mr. CHRISTENSEN. I buy Rand & McNally maps, and so do the agents for their assistants in the field.

Mr. BRANDEIS. Well, here is a Congressional Directory for December 8, 1908. I possess some of these. Don't you think that might have been his personal property?

Mr. CHRISTENSEN. Yes; but it was very necessary to the office, too.

Mr. BRANDEIS. But do you think that was necessarily government property?

Mr. CHRISTENSEN. I considered it so at the time I put it on there.

Mr. BRANDEIS. I see another important article here—an envelope addressed to L. R. Glavis, C. F. D., 310 Custom-House, Portland, Oreg., no inclosure. Was that an important piece of government property which he seemed to be embezzling?

Mr. CHRISTENSEN. That was evidently an official envelope or it would not have been taken.

Mr. BRANDEIS. Now, you said you could not describe these articles here. Was not there anything in these articles to indicate to you how they happened to be there?

Mr. CHRISTENSEN. No; I do not know how they happened to be there.

Mr. BRANDEIS. Well, as a lawyer, and I suppose something of a detective, as the head of a division of the service, could you not have exercised imagination when you looked at those things and saw how they happened to be there? Could you not really have seen any reason?

Mr. CHRISTENSEN. I do not know what official records should be doing in a box that was intended entirely for personal property, and in which was found mostly his personal property.

Mr. BRANDEIS. Well, don't you? Let us see whether I can not suggest a possibility to you.

Mr. CHRISTENSEN. Well, yes; you might suggest a possibility; you are full of suggestions.

Mr. BRANDEIS. From my knowledge and your knowledge of affairs, see whether you could not imagine. You have heard how these things happened to be up there, have you not?

Mr. CHRISTENSEN. Heard how they happened to be there?

Mr. BRANDEIS. Yes; heard Kennedy state or read it in the testimony.

Mr. CHRISTENSEN. What property do you refer to now?

Mr. BRANDEIS. All of the property of Glavis that was up in these rooms.

Mr. CHRISTENSEN. His personal effects?

Mr. BRANDEIS. Yes; all the packages containing that—that is, the boxes and barrels.

Mr. CHRISTENSEN. Yes, sir.

Mr. BRANDEIS. You know where they came from, didn't you?

Mr. CHRISTENSEN. Yes, sir.

Mr. BRANDEIS. They came from his residence in Portland?

Mr. CHRISTENSEN. Yes, sir.

Mr. BRANDEIS. And they were shipped there when Mr. Glavis became chief of that division, and they were, as a matter of fact, as you know, packed up by his roommate, Andrew Kennedy, were they not?

Mr. CHRISTENSEN. I think that is what Andrew Kennedy stated.

Mr. BRANDEIS. He left the matter to Andrew Kennedy to pack up all his effects, and they were packed up and sent up there? Now isn't it quite a common thing, and almost a necessary incident, that papers, particularly when one is traveling about as much as the chief of field division or a special agent is, that books and papers are one's personal possession, although they ought ultimately, as in the case—Mr. Glavis got together any quantity of stuff and sent it down, as you have said, by Stoner to the office?

Mr. CHRISTENSEN. Yes.

Mr. BRANDEIS. Isn't that an evidence—you knew that happened in the case of Stoner bringing down those packages, did you not?

Mr. CHRISTENSEN. Yes; but it was entirely improper for Glavis to take any official records out of the office; they were out of their place when they were among his personal effects. Where they would be really needed was in connection with the investigation and the proper work of the office.

Mr. BRANDEIS. How are you going to use that envelope addressed to this gentleman, that had no inclosures?

Mr. CHRISTENSEN. Oh, yes.

Mr. BRANDEIS. How were you going to use it? Is there anything here that you are lacking, that you are in need of, that you need in the use—

Mr. CHRISTENSEN. I think you will find some there.

Mr. BRANDEIS. Perhaps that Northern Navigation time-table.

Mr. CHRISTENSEN. I told you that was personal.

Mr. BRANDEIS. How about the Western Union blanks?

Mr. CHRISTENSEN. They were, possibly; we frequently telegraph.

Mr. BRANDEIS. Had you suffered any for lack of them?

Mr. CHRISTENSEN. No.

Mr. BRANDEIS. I was not assuming whether they ought to be there or not. I was asking you whether it was not the natural and reasonable thing that did not have to be explained on the theory of embezzlement?

Mr. CHRISTENSEN. That was the most unnatural thing to find official records among his personal property.

Mr. BRANDEIS. Didn't you know, as a matter of fact, that he had at his hotel, before he turned over these papers to you, a very large number of official documents?

Mr. CHRISTENSEN. Yes.

Mr. BRANDEIS. Which he was using and which everybody, as they passed around from one place to another, are carrying with them and sometimes are very prompt in returning and sometimes not?

Mr. CHRISTENSEN. They were very improperly in his room at the Lincoln Hotel.

Mr. BRANDEIS. I am not asking you whether they were improperly there or properly there; but I am asking you whether or not they were naturally there and possibly innocently there?

Mr. CHRISTENSEN. They were not naturally there. Whether innocently or not, I do not know.

Mr. BRANDEIS. What do you mean by naturally?

Mr. CHRISTENSEN. What do you mean?

Mr. BRANDEIS. I mean by naturally that which is in accordance with human conduct, fallible as it is. Now, I ask you whether you, an experienced chief of field division, with somewhat of detective training in weighing evidence, could find no explanation of the presence of those papers there except that Glavis was guilty of embezzlement of public property.

Mr. CHRISTENSEN. There are always explanations for everything.

Mr. BRANDEIS. Well, what explanation could you think of other than that he was guilty of embezzlement of Government property?

Mr. CHRISTENSEN. One thing is that he must have been exceedingly careless with the records; that might have been an explanation.

Mr. BRANDEIS. Now, did you suggest to Mr. Schwartz the possibility of that explanation of carelessness?

Mr. CHRISTENSEN. I do not know that I did.

Mr. BRANDEIS. Did you suggest it to Mr. Sheridan?

Mr. CHRISTENSEN. I did not have this information at that time when I talked to Sheridan, when we were investigating this.

Mr. BRANDEIS. Then you did not suggest to anyone that possible explanation?

Mr. CHRISTENSEN. I do not think so.

Mr. BRANDEIS. Now, is there any other explanation; that is, any other explanation than the guilt of Glavis, other than that Glavis was guilty of embezzlement that ever occurred to you, of the fact that these documents were, if they were found there?

Mr. CHRISTENSEN. Usually when we investigate crime, investigate cases where crimes are alleged, we do not try to seek explanations for violations of the law.

Mr. BRANDEIS. Don't you? Is not that your business to find out what the explanation is if there is an apparent violation of law?

Mr. CHRISTENSEN. They are all considered, of course.

Mr. BRANDEIS. Now, what possible explanation did you consider there?

Mr. CHRISTENSEN. Well, I considered that one; that he was exceedingly careless with his records.

Mr. BRANDEIS. You knew that, didn't you?

Mr. CHRISTENSEN. Yes, generally.

Mr. BRANDEIS. You knew that, if anything could be established as a habit, that you had abundant proof it was Mr. Glavis's habit to have in his personal possession a large number of documents, didn't you?

Mr. CHRISTENSEN. No, sir; I didn't know that it was his habit.

Mr. BRANDEIS. You knew that he did have them?

Mr. CHRISTENSEN. Yes, sir. I knew that he had these important documents at the Lincoln Hotel, but I didn't know it was his habit.

Mr. BRANDEIS. And when you speak of these important documents at the Lincoln Hotel, I suppose you mean those he returned in the morning at 9.20?

Mr. CHRISTENSEN. Yes; the different records which he returned from time to time.

Mr. MADISON. Why did you say, in response to Mr. Graham, that after a certain point, after a certain time, you were driving at Mr. Glavis, trying to indict him?

Mr. DENBY. I was just going to get to that.

Mr. MADISON. I beg your pardon for breaking in.

Mr. DENBY. Did you mean to say to Mr. Graham what the record shows that you said, that you were trying—I have forgotten just exactly what it was, but I think it was that you were seeking evidence to convict. Now, I am asking you whether you mean to say that you were seeking evidence to convict anybody, or whether you were trying to get the facts?

Mr. CHRISTENSEN. Necessarily, we would be doing that in the investigation, getting evidence, if there were facts enough to convict the persons who were responsible for the violation of the statute.

Mr. DENBY. That is what I mean by the fact; that you were trying to get facts; that covers it.

Mr. CHRISTENSEN. Yes, sir; get the facts, and if those were sufficient, of course, we wanted an indictment and a conviction.

Mr. GRAHAM. Mr. Chairman, there are a few other questions that I wanted to ask, but I guess they will do now as well as then. Mr. Christensen, your answer to me was that you came to the conclusion about the end of October that Glavis was guilty of this offense. Now, when did you first suspect that he was guilty of this offense?

Mr. CHRISTENSEN. Well, I do not know; not until the letters were called to my particular attention. That was some time shortly before that.

Mr. GRAHAM. Fix the time as near as you can, for instance, with reference to when you took charge of the office.

Mr. CHRISTENSEN. It was probably about October 18—when the letter of Mr. Sheridan was written.

Mr. GRAHAM. That would be almost a month after you took charge of that office?

Mr. CHRISTENSEN. Yes, sir; almost a month.

Mr. GRAHAM. And from the 18th of October until the end of it, while you suspected him, you had not yet fully made up your mind?

Mr. CHRISTENSEN. No, sir.

Mr. GRAHAM. Until about the end of the month, when you did reach a conclusion?

Mr. CHRISTENSEN. Yes, sir.

Mr. GRAHAM. From that time on, as you stated to me, your purpose was to find evidence to sustain your conclusions—that is, to convict Glavis?

Mr. CHRISTENSEN. Yes, sir; of course, to get the evidence, to get the facts.

Mr. GRAHAM. That would mean, of course, to get the evidence that would convict him?

Mr. CHRISTENSEN. Yes, sir; I do not think it was Mr. Schwartz's idea to get evidence to convict Glavis.

Mr. GRAHAM. I am not asking you about Mr. Schwartz; but it is the state of your mind that I was inquiring about.

Mr. BRANDEIS. Mr. Christensen, you stated that you still think the evidence establishes that Glavis concealed those papers. Am I correct in that understanding?

Mr. CHRISTENSEN. I still think so.

Mr. BRANDEIS. Will you state to the committee what the evidence is which you think establishes the fact that he concealed those papers?

Mr. CHRISTENSEN. Now, I think the facts have been gone over and shown to the committee—as shown by the evidence. In the first place the letters were brought from Juneau by Mr. Bowman; that they were taken from a satchel by Mr. Glavis and copied by Miss Shartell at his request, and after that nothing was heard of them or seen of them until they were found.

Mr. BRANDEIS. That, you think, in view of all the circumstances, establishes that Glavis concealed those letters?

Mr. CHRISTENSEN. I think it does.

Mr. BRANDEIS. Well, now, as detective, as a collector of evidence for the Government to establish cases and make reports, did it ever occur to you to consider the probability of that action—did it?

Mr. CHRISTENSEN. I did not catch your question.

Mr. BRANDEIS. I asked you whether in your capacity as an expert, acting for the Government in the collection of evidence, and the making of reports upon evidence, it ever occurred to you to consider whether it was probable or improbable that Glavis would have put those papers where you say you found them for the purpose of concealing them from the Government or embezzling them, as you have expressed it in your correspondence?

Mr. CHRISTENSEN. You ask if it occurred to me that such were the facts?

Mr. BRANDEIS. No; I ask whether it had ever occurred to you to consider, in view of the fact that you found those papers, if you found them in that box which was opened up there—whether that was an act of concealment or embezzlement on Glavis's part?

Mr. CHRISTENSEN. Well, they were in the Federal Building, of course. That question has been—

Mr. BRANDEIS. Whether it was probable if Glavis wanted to conceal those papers that he would have put them in the place where you found them. Did you ever consider that question?

Mr. CHRISTENSEN. I do not know that I have. It has been suggested that it seemed he was smooth enough to leave them in the Federal Building to avoid conviction.

Mr. BRANDEIS. Is it not one of the most extraordinary places to conceal papers, if you wanted to conceal them, when a man had a pocket and probably a trunk, or a thousand other places in the world open to him, that he would select for the purpose of concealment, a room to which he has not access, except with the consent of a custodian, and in his presence? Did that ever occur to you as being improbable, almost to the point of being ridiculous?

Mr. CHRISTENSEN. I am not speaking for Mr. Glavis's mind.

Mr. BRANDEIS. No; but I am asking for the ordinary human mind which you, as an expert and a detective, and a custodian of the Government's property, looking after it and collecting the evidence, are bound in the course of your business to consider.

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go into this common storeroom could rummage around and find them if they had a choice to; did not that seem to you, as you were considering those possible criminal proceedings and this charge of concealment—did it ever occur to you that that was somewhat an absurd position?

Mr. CHRISTENSEN. How could I consider that when I was investigating it?

Mr. BRANDEIS. No; but when you found those letters and still insisted after you found those letters that he concealed them, and insist so now, I ask you whether it never occurred to you that that was an absurd hypothesis?

Mr. CHRISTENSEN. It looks peculiar that a man would do anything like that.

Mr. BRANDEIS. Does it not look so peculiar as to have raised in your mind the reasonable doubt as to whether Glavis had really concealed those papers there?

Mr. CHRISTENSEN. I do not think that I had any doubts about it.

Mr. BRANDEIS. I ask you whether that circumstance had ever been considered by you as raising a possible doubt?

Mr. CHRISTENSEN. Oh, certainly; yes, sir. It raised the doubt.

Mr. BRANDEIS. When that doubt was raised, how did you resolve it?

Mr. CHRISTENSEN. I considered that he was still guilty of hiding them there, or putting them away—whatever he did with them.

Mr. BRANDEIS. The very question that was up, or should have been up in your mind, is whether he did put them there, was it?

Mr. CHRISTENSEN. Certainly.

Mr. BRANDEIS. Now, I ask you whether, when the perfect absurdity of such a place and method of concealment was apparent, whether it ever occurred to you to doubt that conclusion which you had formed about the 1st of November that he was guilty of embezzling the Government's property? I am asking your state of mind—asking what happened in your mind.

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Mr. BRANDEIS. But I suppose in regard to human conduct, if there is reasonable doubt, one is not certain that one has committed a crime. Why did you feel this certainty?

Mr. CHRISTENSEN. I do not know. There is no doubt that I doubted it, since it has come up that he would really do such a thing; but they were found there, and I do not see how I could arrive at any other conclusion.

Mr. BRANDEIS. Could you not arrive—even assuming that they were there without any interposition on your part—would it not be possible that in view of the facts which you learned that Kennedy had taken all those things there, had thrown them in, and that they

had been moved over, that they might have gotten there without Glavis having anything to do with it?

Mr. CHRISTENSEN. Oh, certainly; anything is possible.

Mr. BRANDEIS. Yes; but is it possible, I ask you, that any sane man, and particularly a man of Mr. Glavis's ability, would do so absurd a thing if he wanted to keep, or conceal, or whatever you like, these 24 papers, that he would put them up in the grand jury room, to which he had not the key, where the government officials have the key, and where he never could get at them except in the presence of some government official? Now, did not that occur to you?

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Mr. CHRISTENSEN. It possibly occurred to me, but in view of what I have learned about Glavis there was still my conviction that he would actually do such a thing.

Mr. BRANDEIS. Have you ever learned that Glavis did so very foolish a thing?

Mr. CHRISTENSEN. No, sir; I do not think that he ever did such a thing.

Mr. BRANDEIS. Would not this have been an inordinately foolish thing for any human being to have done?

Mr. CHRISTENSEN. Well, Glavis is capable of doing most anything.

Mr. BRANDEIS. You mean most anything bad, not anything foolish?

Mr. CHRISTENSEN. Yes; foolish.

Mr. BRANDEIS. Has he ever done anything that you might term foolish, except to present the letter to the President of August 11, 1909?

Mr. CHRISTENSEN. I do not know that I can recall anything.

Mr. BRANDEIS. I do not believe you can.

Mr. MADISON. Mr. Brandeis, I am going to make the suggestion that you take up some other branch of the matter besides the state of the witness's mind. I think that matter has been gone over fully enough.

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Senator PURCELL. You did not know that he had taken copies until after you had found them, as you claim, in the box?

Mr. CHRISTENSEN. No, sir.

Mr. MADISON. Why did you say, in response to Mr. Graham, that after a certain point, after a certain time, you were driving at Mr. Glavis, trying to indict him?

Mr. DENBY. I was just going to get to that.

Mr. MADISON. I beg your pardon for breaking in.

Mr. DENBY. Did you mean to say to Mr. Graham what the record shows that you said, that you were trying—I have forgotten just exactly what it was, but I think it was that you were seeking evidence to convict. Now, I am asking you whether you mean to say that you were seeking evidence to convict anybody, or whether you were trying to get the facts?

Mr. CHRISTENSEN. Necessarily, we would be doing that in the investigation, getting evidence, if there were facts enough to convict the persons who were responsible for the violation of the statute.

Mr. DENBY. That is what I mean by the fact; that you were trying to get facts; that covers it.

Mr. CHRISTENSEN. Yes, sir; get the facts, and if those were sufficient, of course, we wanted an indictment and a conviction.

Mr. GRAHAM. Mr. Chairman, there are a few other questions that I wanted to ask, but I guess they will do now as well as then. Mr. Christensen, your answer to me was that you came to the conclusion about the end of October that Glavis was guilty of this offense. Now, when did you first suspect that he was guilty of this offense?

Mr. CHRISTENSEN. Well, I do not know; not until the letters were called to my particular attention. That was some time shortly before that.

Mr. GRAHAM. Fix the time as near as you can, for instance, with reference to when you took charge of the office.

Mr. CHRISTENSEN. It was probably about October 18—when the letter of Mr. Sheridan was written.

Mr. GRAHAM. That would be almost a month after you took charge of that office?

Mr. CHRISTENSEN. Yes, sir; almost a month.

Mr. GRAHAM. And from the 18th of October until the end of it, while you suspected him, you had not yet fully made up your mind?

Mr. CHRISTENSEN. No, sir.

Mr. GRAHAM. Until about the end of the month, when you did reach a conclusion?

Mr. CHRISTENSEN. Yes, sir.

Mr. GRAHAM. From that time on, as you stated to me, your purpose was to find evidence to sustain your conclusions—that is, to convict Glavis?

Mr. CHRISTENSEN. Yes, sir; of course, to get the evidence, to get the facts.

Mr. GRAHAM. That would mean, of course, to get the evidence that would convict him?

Mr. CHRISTENSEN. Yes, sir; I do not think it was Mr. Schwartz's idea to get evidence to convict Glavis.

Mr. GRAHAM. I am not asking you about Mr. Schwartz; but it is the state of your mind that I was inquiring about.

Mr. BRANDEIS. Mr. Christensen, you stated that you still think the evidence establishes that Glavis concealed those papers. Am I correct in that understanding?

Mr. CHRISTENSEN. I still think so.

Mr. BRANDEIS. Will you state to the committee what the evidence which you think establishes the fact that he concealed those papers?

Mr. CHRISTENSEN. Now, I think the facts have been gone over and own to the committee—as shown by the evidence. In the first place the letters were brought from Juneau by Mr. Bowman; that they were taken from a satchel by Mr. Glavis and copied by Miss Martell at his request, and after that nothing was heard of them or even of them until they were found.

Mr. BRANDEIS. That, you think, in view of all the circumstances, establishes that Glavis concealed those letters?

Mr. CHRISTENSEN. I think it does.

Mr. BRANDEIS. Well, now, as detective, as a collector of evidence for the Government to establish cases and make reports, did it ever occur to you to consider the probability of that action—did it?

Mr. CHRISTENSEN. I did not catch your question.

Mr. BRANDEIS. I asked you whether in your capacity as an expert, acting for the Government in the collection of evidence, and the making of reports upon evidence, it ever occurred to you to consider whether it was probable or improbable that Glavis would have put those papers where you say you found them for the purpose of concealing them from the Government or embezzling them, as you have expressed it in your correspondence?

Mr. CHRISTENSEN. You ask if it occurred to me that such were the facts?

Mr. BRANDEIS. No; I ask whether it had ever occurred to you to consider, in view of the fact that you found those papers, if you found them in that box which was opened up there—whether that was an act of concealment or embezzlement on Glavis's part?

Mr. CHRISTENSEN. Well, they were in the Federal Building, of course. That question has been—

Mr. BRANDEIS. Whether it was probable if Glavis wanted to conceal those papers that he would have put them in the place where you found them. Did you ever consider that question?

Mr. CHRISTENSEN. I do not know that I have. It has been suggested that it seemed he was smooth enough to leave them in the Federal Building to avoid conviction.

Mr. BRANDEIS. Is it not one of the most extraordinary places to conceal papers, if you wanted to conceal them, when a man had a pocket and probably a trunk, or a thousand other places in the world open to him, that he would select for the purpose of concealment, a room to which he has not access, except with the consent of a custodian, and in his presence? Did that ever occur to you as being improbable, almost to the point of being ridiculous?

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Mr. CHRISTENSEN. Oh, certainly; yes, sir. It raised the doubt.

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Mr. CHRISTENSEN. Certainly.

Mr. BRANDEIS. Now, I ask you whether, when the perfect absurdity of such a place and method of concealment was apparent, whether it ever occurred to you to doubt that conclusion which you had formed about the 1st of November that he was guilty of embezzling the Government's property? I am asking your state of mind—asking what happened in your mind.

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Senator PURCELL. But he had copies.

Mr. CHRISTENSEN. I did not know that he had copies.

Senator PURCELL. You did not know that he had copies?

Mr. CHRISTENSEN. No, sir.

Senator PURCELL. You thought that he would want to copy the originals?

Mr. CHRISTENSEN. Yes, sir; that must have been my idea.

Mr. DENBY. Did you know what was in them?

Mr. CHRISTENSEN. No, sir.

Senator PURCELL. What force would the originals be to them when the question could arise as to whether or not they were a public document?

Mr. CHRISTENSEN. On the face of them they were not public documents.

Senator PURCELL. They had been sent through the mails, had they not?

Mr. CHRISTENSEN. Yes, sir; but——

Senator PURCELL. And had been taken from the files in the Juneau office?

Mr. CHRISTENSEN. Yes, sir.

Senator PURCELL. You knew they were public documents?

Mr. CHRISTENSEN. Yes.

Senator PURCELL. And he must have known it?

Mr. CHRISTENSEN. Yes, sir.

Senator PURCELL. Now, did that not strike you as rather peculiar that he would want to keep them away from their proper place?

Mr. CHRISTENSEN. Yes, sir; it was peculiar.

Senator PURCELL. You did not give that any weight?

Mr. CHRISTENSEN. I thought it was strange that he would take them; certainly.

Senator FLETCHER. Do you know, Mr. Christensen, of any use that the Government has made of those letters since they have been discovered?

Mr. CHRISTENSEN. No, sir; I do not recall now whether they have been or not.

Senator FLETCHER. Do you know that the Government has been deprived of any right or lost anything by reason of these letters being absent from the office?

Mr. CHRISTENSEN. No, sir; but, of course, when we were investigating them we did not know what they contained.

Senator FLETCHER. No; but after you had discovered them, and after you read them and had them in your possession, did you consider that the Government has been, or had been, then deprived of any right or lost any interest or suffered anything in any way by reason of their not being accessible at all times?

Mr. CHRISTENSEN. No; I do not believe that the Government has—not that I know of—in any particular case.

Senator FLETCHER. Then the Government has really not been deprived of the use of any documents of any consequence or value?

Mr. CHRISTENSEN. No, sir; they were found afterwards to be insignificant. There was really nothing in them.

Senator PURCELL. But you had made up your mind prior to that that Glavis had the letters, had you not?

Mr. CHRISTENSEN. Yes, sir.

Senator PURCELL. You were satisfied about that?

Mr. CHRISTENSEN. Yes, sir; that he had done away with them?

Senator PURCELL. From all you know and believe, you believed that he had?

Mr. CHRISTENSEN. Yes, sir; from what I learned.

Senator PURCELL. What did you believe or feel that he wanted to do with those letters?

Mr. CHRISTENSEN. I had no idea; I did not know what they contained.

Senator PURCELL. You did not know what they contained?

Mr. CHRISTENSEN. No, sir.

Senator PURCELL. You had no idea, then, why he wanted to keep them—

Mr. CHRISTENSEN. No, sir; I had no idea.

Senator PURCELL. Out of their proper place? Did you not think that he wanted to make some use of them against some officials—some superior official?

Mr. CHRISTENSEN. No doubt that occurred to me; yes, sir.

Senator PURCELL. Then you did feel that if he did have the letters, the reason he had them was to make some use of them against a superior officer? Is that correct?

Mr. CHRISTENSEN. That was, of course, not the reason why they were investigated. That was probably taken into consideration. We wanted to locate them.

Senator PURCELL. But that occurred to you?

Mr. CHRISTENSEN. Yes, sir.

Senator PURCELL. If that is true, did it not occur to you that of all men he was the one man who would want those letters in their proper place, so that if he made any charge of any kind or character against a superior officer he could refer to those records to sustain himself?

Mr. CHRISTENSEN. Yes, sir; that is true. I have stated that that did occur to me, but the principal reason we wanted them was to ascertain what they really contained and see if they could help us out on the Cunningham cases.

Senator PURCELL. Then if it is true that you believed that he wanted to make a charge against some superior officer, based upon the contents of those letters, and that he would naturally want them where they could be referred to, in their proper place, do you not think it strange then that he would abstract them or take them away from there?

Mr. CHRISTENSEN. It seems strange. He did, as a matter of fact, use them—that is, they were sent to Collier's.

Senator PURCELL. They were copies, were they not?

Mr. CHRISTENSEN. Yes, sir; we found out afterwards that those were copies.

Senator PURCELL. In support of the contents of those copies, would he not want, and did you not think that the ordinary man would want, the originals in their proper place so that he might refer to them and there could be no question about their existence?

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Senator FLETCHER. Then how is it that you wrote on February 9 to Mr. Schwartz that it was your opinion that Mr. Glavis knew at the time the whereabouts of these letters and that he was responsible for the loss? Why did you use the word "loss" there?

Mr. CHRISTENSEN. That was simply lost possession. I must have been referring to that.

Senator FLETCHER. Then you say further that you believed that he had secreted those letters and deprived the Government of the use thereof; and further on you speak of parties responsible for the Government having been deprived of the use of those letters as if that was a very important matter in your mind, even after you had discovered the letters and had read them.

Mr. DENBY. What is the date of that?

Senator FLETCHER. February 9 in transmitting them to Mr. Schwartz.

Mr. CHRISTENSEN. Of course, I had not considered them carefully; they might have been of some use at that time. I did not consider them very carefully. Those Cunningham letters might have been of some use in the hearings.

Senator FLETCHER. Can you suggest any possible advantage to Mr. Glavis in concealing those letters?

Mr. CHRISTENSEN. I do not know that I can; I do not know what he would have had in view when they were taken by him, if they were.

Senator FLETCHER. Can you suggest any reason, now that you have seen the letters and know what they are, any motive or any purpose on his part for concealing those letters? Where would there be any benefit or any advantage to him in any way?

Mr. CHRISTENSEN. I do not know where there would be any advantage in them except that when he called for them and we were unable to produce them, it would appear as though the officials of the Government had destroyed the records, and that would help him in his case here.

Mr. BRANDEIS. That could hardly be the fact, could it, Mr. Christensen, when you had furnished him back of the 20th of September with notice of the possession of those documents. You had charged him on the 20th of September with the possession of those documents. Was it not a matter of fact that his counsel called upon you to produce those documents—very strong evidence, if any were needed, that Mr. Glavis did not have the documents, and was in no way responsible for their absence?

Mr. CHRISTENSEN. I do not know that it was very strong evidence.

Mr. BRANDEIS. Just consider that situation. Did not the Government have a full answer to the question, "Why did you not produce those documents?" and your answer is, "Ever since the 20th day of September we have been trying to get those documents from you." Does not that seem to be a pretty good answer, and would not Glavis—if he suggested this to his counsel, would he not have been very foolishly to have brought up the issue with the Government and said, "Produce those letters;" and when the Government could turn around and say, "Those letters are the very letters we have asked you to produce and which we say have been lost to the Government because you have taken them?" Did that occur to you?

Mr. CHRISTENSEN. I have lost the track of that question.

Mr. McCALL. Mr. Brandeis, did you, as a matter of fact, call on the department to produce those very letters?

Mr. Brandeis. I called on the department to produce all the letters brought by Bowman.

Mr. McCALL. Did you designate these letters?

Mr. Brandeis. We wanted them all, and we also called on the department and referred to them as letters contained in the list which Bowman gave, and which list included these letters. This was the first call, apparently, on January 27.

Mr. Christensen, my question was in substance whether the fact that he had called for all the letters, including these 20, would not have raised in your mind the thought that Mr. Glavis did not have the letters and was not responsible for their absence, in view of the fact that you had charged him with not returning those letters on the 10th of September, 1909?

Mr. Christensen. Yes, sir; I possibly thought it was peculiar.

Mr. Brandeis. But it did not affect your judgment as to whether he was guilty of this charge or not, and does not now?

Mr. Christensen. I do not know; it possibly did affect my judgment.

Mr. Brandeis. Nevertheless you wrote after that time the letter that Senator Fletcher has just read, or partly read?

Mr. Christensen. Yes, sir.

Mr. Brandeis. You have said also, in answer to Senator Fletcher's question, that what you were anxious to do was to know what the contents of these letters were, because they might aid you in the Cunningham proceedings?

Mr. Christensen. That was one of the reasons.

Mr. Brandeis. And did you not inquire of the Forestry Service whether they could not furnish to you copies of those letters?

Mr. Christensen. We did not know that they had them.

Mr. Brandeis. But you knew that they had copies of many letters, did you not?

Mr. Christensen. Yes, sir.

Mr. Brandeis. And in all this laborious thought that you gave to this missing letter-question it never occurred to you to ask them whether they chanced to have copies of them among their files?

Mr. Christensen. I do not remember that I did ask them. Sheridan might have asked them.

Mr. Brandeis. I am asking you whether it occurred to you to ask them?

Mr. Christensen. It evidently did not, because I did not ask them.

Mr. Brandeis. Now, you said in this letter that on Sunday, the 9th of September, the very day after Glavis's service with the Government ceased, you threatened him with civil and criminal proceedings because he would not deliver over to you certain letters. That is a fact, is it?

Mr. Christensen. Yes, sir.

Mr. Brandeis. Now, as a matter of fact, was not the only question between you and Glavis at that time the question of the form of the receipt? He wanted a receipt which set forth in considerable part copies of the letters which he delivered over to you and he dictated such a receipt to Spaulding?

Mr. Christensen. Yes, sir; he had dictated it.

Mr. BRANDEIS. He had dictated it to Spaulding. When you saw Spaulding you forbade Spaulding writing out a receipt in that form. Is that not a fact?

Mr. CHRISTENSEN. That is correct.

Mr. BRANDEIS. And then Glavis, with the aid of Mr. Richardson, as you afterwards learned, secured a stenographer who worked from Saturday afternoon until 6 o'clock the next Monday morning to make copies of those very documents?

Mr. CHRISTENSEN. I understood that it was Sunday afternoon.

Mr. BRANDEIS. Yes, Sunday afternoon; I ought to have said Sunday afternoon. He worked until Monday morning at 6 o'clock to make copies of these documents, the very thing that you would not let Spaulding, in another form, do for him. Is that the fact?

Mr. CHRISTENSEN. I have since learned that he did that; yes, sir.

Mr. BRANDEIS. Now, the documents that he had at that time, and that he was making copies of were to a certain extent the exhibits attached to the Glavis letter to the President and certain other documents like the Jones report of December 2, 1908, which is embodied in the letter to the President itself, were they not?

Mr. CHRISTENSEN. I do not know. I have never noticed what papers were attached to the President's report.

Mr. BRANDEIS. Have you never read the President's report?

Mr. CHRISTENSEN. I think I read Glavis's conclusions, but I never examined the exhibits.

Mr. BRANDEIS. You did not?

Mr. CHRISTENSEN. No, sir.

Mr. BRANDEIS. On the Spaulding receipt; that is the receipt that he dictated to Spaulding and which you would not allow Spaulding to write out, is this, is it not, on page 2753 of the testimony [exhibiting the record]?

Mr. CHRISTENSEN. Yes, sir; that is the one.

Mr. BRANDEIS. And can you now turn in this testimony to the copy of the receipt of the list of these papers which were delivered to you on Monday at 9.20—Monday, September the 20th?

Mr. CHRISTENSEN. Yes, sir.

Mr. BRANDEIS. Where is it?

Mr. CHRISTENSEN. Do you mean the copy? Oh, no; what was your question?

Mr. BRANDEIS. The list of papers which Glavis returned to you on Monday, September 20, at 20 minutes past 9 o'clock?

Mr. CHRISTENSEN. The list of papers was introduced yesterday. Here is the list on page 2627. I think that is it.

Mr. BRANDEIS. That, by comparison, will be found to be a list of just the same documents which appear in Spaulding's notes?

Mr. CHRISTENSEN. Yes, sir; I think that is correct.

Mr. BRANDEIS. You stated yesterday that of the 24 letters which you demanded on September 20, Glavis, on the morning of September 20, had already returned 1?

Mr. CHRISTENSEN. Yes, sir; he returned 1 letter of January 15.

Mr. BRANDEIS. Did he return that one before you wrote him the letter requesting the return of the 24?

Mr. CHRISTENSEN. I think he did; he had returned that, and after that I called his attention to the other letter of the 24.

Mr. BRANDEIS. You said you did not remember whether that letter was written or mailed; you stated that earlier in your testimony?

Mr. CHRISTENSEN. I said that I did not remember what?

Mr. BRANDEIS. You did not remember whether the letter of September 20 was delivered to him when he was in there or was mailed to him?

Mr. CHRISTENSEN. Yes, sir; I do not remember whether I gave him the original or whether it was mailed to him that morning.

Mr. BRANDEIS. Do you mean that you spoke to him before the letter itself was delivered?

Mr. CHRISTENSEN. I either showed him the original or showed him a copy of it containing the list of the letters.

Mr. BRANDEIS. Now, when did you discover that that letter of January 15, 1908, had been returned to the office?

Mr. CHRISTENSEN. I did not know that that was identified with his letter of September 20 until some time afterwards. I am not sure.

Mr. BRANDEIS. How long afterwards?

Mr. CHRISTENSEN. Well, it might not have been until the matter was called to my attention in October—after October 18.

Mr. BRANDEIS. After October 18?

Mr. CHRISTENSEN. Yes, sir.

Mr. BRANDEIS. As a matter of fact, you undertook to have Stoner and others make affidavits that that letter, among others, could not be found, and Stoner called to your attention, did he not, the fact that he had seen that very letter in the files?

Mr. CHRISTENSEN. No, sir; that occurred, I understand, during the time Sheridan was there. I do not know anything about that.

Mr. BRANDEIS. That is, it was not with you; it was with Sheridan?

Mr. CHRISTENSEN. It was with Mr. Sheridan.

Mr. BRANDEIS. Now, when did you discover that two others of those letters were in the office?

Mr. CHRISTENSEN. I think that was not discovered until after October 18, either. I think Mr. Sheridan discovered that when he went there.

Mr. BRANDEIS. When did he find those two others of the letters which you had charged Glavis with?

Mr. CHRISTENSEN. They were in the envelope, I think.

Mr. BRANDEIS. In a manila envelope?

Mr. CHRISTENSEN. Yes, sir; with the balance of the letters.

Mr. BRANDEIS. With the balance of the letters, and that manila envelope was lying where?

Mr. CHRISTENSEN. On Mr. Sheridan's desk, in a wicker basket.

Mr. BRANDEIS. Now, when this committee called for that statement of Watson Allen—the memorandum of Watson Allen that he dictated in the presence of Mr. Hoyt and Mr. Glavis—you stated in your letter of January 31, on page 2784, as follows:

Attorney Murphy, for the defendants, informed Mr. Todd that he does not believe that any statement was made by Mr. Allen. Richardson, chief witness for the Government, is of the same opinion.

Did Mr. Richardson make any such statement to you?

Mr. CHRISTENSEN. No, sir; Mr. Todd told me of that. I got that information from Mr. Todd.

Mr. BRANDEIS (reading):

Mr. Todd is also familiar with the case, he having filed a brief therein, and he is positive that no statement by Allen was ever referred to in the case. I have since reviewed my records, but can find no mention of any such statement.

Now, Mr. Christensen, how soon after that did you find that statement?

Mr. CHRISTENSEN. I found that on February 10, in Portland, among the papers that were returned to me by Glavis on November 5.

Mr. BRANDEIS. Those papers that you found that statement in were in your Portland office?

Mr. CHRISTENSEN. Yes, sir.

Mr. BRANDEIS. What were they doing down there?

Mr. CHRISTENSEN. Well, I kept them all together there. There was a package of letters, and I had been keeping them on my desk together all the time, because they related to matters which were not current, so far as I know, and I simply kept them there.

Mr. BRANDEIS. That was this large bundle of papers that Glavis had returned to you on November 5?

Mr. CHRISTENSEN. Yes, sir.

Mr. BRANDEIS. And those were not put into this office of the Seattle division where they properly belonged?

Mr. CHRISTENSEN. They related more to the Portland division than to the Seattle division.

Mr. BRANDEIS. Why did you not separate them and put those that were in Portland division among the papers of the Portland division and return the others to the papers of the Seattle division?

Mr. CHRISTENSEN. It never occurred to me, because there were no current papers, as far as I know.

Mr. BRANDEIS. Were there any current papers among the papers that you found last fall which Mr. Glavis had up in his box, bound up with the Western Union blanks in the steamship time-tables?

Mr. CHRISTENSEN. I have stated that there were no current papers there. There were, however, copies of his daily reports from January 1 to June 30, 1909.

Mr. BRANDEIS. I beg your pardon; will you look at that and see whether that is true—whether it is 1909 or 1908?

Mr. CHRISTENSEN. I have the daily reports down in the office. It is my impression that is 1909.

Mr. BRANDEIS. That being there would not be current, would it?

Mr. CHRISTENSEN. No, sir.

Mr. MADISON. Where is that statement, Mr. Christensen; in this list?

Mr. BRANDEIS. There is an item, appearing on page 2813.

Mr. MADISON. Here is one on 2800, daily records, etc., L. R. Glavis, to and including June 4, 1909. Is that what you have reference to?

Mr. BRANDEIS. No, sir; there is another one, Mr. Madison, on the next page, on page 2813—"Loose-leaf price book containing carbon copies of Glavis's daily reports, from January 1, 1909, to June 30, 1909, inclusive."

Mr. CHRISTENSEN. That is what I refer to.

Mr. BRANDEIS. That was hardly current together, was it?

Mr. CHRISTENSEN. Well, they would be current in case he would want to refer to his daily reports.

Mr. BRANDEIS. In case you should; but you always knew where you could get the originals in the General Land Office?

Mr. CHRISTENSEN. Yes, sir; but they were parts of the files of the office. We always kept a record.

Mr. BRANDEIS. Those other things that were down there were parts of the files, too, that you kept on your desk?

Mr. CHRISTENSEN. Yes, sir.

Mr. BRANDEIS. Now, we have, then, this instance. You who appear to be a man of great precision in regard to the keeping of papers—

Mr. CHRISTENSEN. I never stated that.

Mr. BRANDEIS. I thought you did in your criticism of Mr. Glavis.

Mr. CHRISTENSEN. I do not think so.

Mr. BRANDEIS. You had on your desk a file of these papers which you did not know the contents of, apparently; had it on there from November 5, until February 9 or 10, and Mr. Sheridan had another file on his desk up to some time in October, where they were lying apparently all through the month of September into October. Now, as a matter of fact, you were occupying that desk quite a good deal, were you not?

Mr. CHRISTENSEN. Yes, sir; I was up there on two or three different trips, I think, between the time that I took hold of the office—

Mr. BRANDEIS. And that envelope that was found was the envelope that contained the Bowman letters?

Mr. CHRISTENSEN. Yes, sir.

Mr. BRANDEIS. And in that letter of October 18 there is special reference made, is there not, to the fact that you did have that envelope on your desk?

Mr. CHRISTENSEN. Yes, sir.

Mr. BRANDEIS. Now, Mr. Christensen, I think you stated that you entered the service in June, 1908, as special agent?

Mr. CHRISTENSEN. I did.

Mr. BRANDEIS. And became chief of the division in March, 1909?

Mr. CHRISTENSEN. Yes, sir.

Mr. BRANDEIS. What other occupation have you had?

Mr. CHRISTENSEN. Prior to entering the service I was practicing law here in Washington, making a specialty of public-land laws, practicing before the Department of the Interior. I was admitted to the bar here, I think, in January, 1908, and prior to that had been with an attorney here in this city. I went with him, I think, in April or May, 1907. He is making a specialty of public-land laws, and I was around the General Land Office all the time, every day during that time.

Mr. BRANDEIS. Who was that attorney with whom you had this connection?

Mr. CHRISTENSEN. Samuel Herrick.

Mr. BRANDEIS. Now, when you were appointed you did not pass the ordinary civil-service examination, did you?

Mr. CHRISTENSEN. I had passed the civil-service examination. I first entered the government service as a postal clerk in 1901—I think January 1, 1901—and I stayed as postal clerk for two years, and then I was appointed assistant chief clerk with headquarters at Portland, reg., and served for two years, and was transferred then to the department here in Washington. I came here and studied law in

1905, and I remained in the Post-Office Department in the Inspection Division of the Second Assistant for about a year and a half—no, two years, about two years. In the meantime I was studying law; and then in the spring of 1907 I resigned from the Post-Office Department and went with Mr. Herrick; and after the year for reinstatement had expired this offer of appointment was tendered me, and I was appointed at the request of President Roosevelt, waiving the civil-service rules.

Mr. BRANDEIS. That is, the President made the exception from the civil-service rules?

Mr. CHRISTENSEN. That was it.

Mr. BRANDEIS. Where did you say you came from before you came to Washington?

Mr. CHRISTENSEN. From Utah—Ogden, Utah.

Mr. BRANDEIS. Were you personally known to Commissioner Dennett before you were appointed?

Mr. CHRISTENSEN. No, sir; I became acquainted with Mr. Dennett in going into the office so frequently.

Mr. BRANDEIS. That was before your appointment?

Mr. CHRISTENSEN. Before my appointment; yes, sir.

Mr. BRANDEIS. Were you acquainted with Mr. Ballinger?

Mr. CHRISTENSEN. No, sir; I had just incidentally run into him one day while he was commissioner, but I do not think he remembered me at all.

Mr. BRANDEIS. Your father knows him quite well, does he not—I refer to Mr. Ballinger?

Mr. CHRISTENSEN. No, sir.

Mr. BRANDEIS. How did it happen that you were excepted from the civil-service rules?

Mr. CHRISTENSEN. I do not know; you will have to ask Mr. Dennett about that.

Mr. MADISON. You say it was at the request of President Roosevelt?

Mr. CHRISTENSEN. I should not have said that. Mr. Dennett, I understand, went to President Roosevelt and requested my appointment and waived the civil-service rules because the year for reinstatement had expired.

Mr. McCALL. That is, it required the action of the President in order to set aside the rule?

Mr. CHRISTENSEN. Yes, sir; in order to set aside the rule. There is a civil-service rule that requires that a civil-service employee must be reinstated within one year, and that he must serve in the department from which he resigned six months before he can be transferred to another one. So if I had wanted to be reinstated I would have had to stay in the department for six months before I was appointed to the General Land Office.

Mr. MADISON. But you had taken a civil-service examination to enter the postal service, had you not?

Mr. CHRISTENSEN. Yes, sir; I took an examination and entered as railway postal clerk, and also as a post-office inspector.

Mr. MADISON. And had been duly installed under the civil-service rules?

Mr. CHRISTENSEN. I had to serve about seven years—a little over six years; six years and a half, about.

Mr. DENBY. Was your father in the government service?

Mr. CHRISTENSEN. No, sir.

The VICE-CHAIRMAN. Mr. Madison, do you desire to ask any further questions?

Mr. MADISON. No, sir.

Mr. GRAHAM. Mr. Christensen, how long have you known Mr. Glavis?

Mr. CHRISTENSEN. I met him the first time in February, 1909, in Portland.

Mr. GRAHAM. And was that a casual meeting or were he and you associated in any way at that time?

Mr. CHRISTENSEN. I met him on business. I was at that time located in San Francisco and had been in Portland on an investigation there.

Mr. GRAHAM. From that time until you succeeded him, how much time had you and he been together or been associated?

Mr. CHRISTENSEN. Well, not very much. He would come down from Seattle every once and a while.

Mr. GRAHAM. Make it more specific. How much?

Mr. CHRISTENSEN. We were together four or five days when I succeeded him.

Mr. GRAHAM. I mean prior to that, from the time you first met him until you succeeded him, how much time were you together?

Mr. CHRISTENSEN. I succeeded him twice, you know. I succeeded him at Portland and at Seattle when he was dismissed. I am speaking now of the times that I saw him in Portland after I succeeded him there.

Mr. GRAHAM. And that would cover how long a space?

Mr. CHRISTENSEN. That would be from March until the present time.

Mr. GRAHAM. I mean that you were together?

Mr. CHRISTENSEN. Oh, until about June, I guess. I never saw very much of him after June.

Mr. GRAHAM. From your first meeting with him until you succeeded him at Seattle in September, in 1909, how many days were you and he together?

Mr. CHRISTENSEN. Possibly two weeks altogether.

Mr. GRAHAM. Was there any connection between his work and yours—any relationship or business connection?

Mr. CHRISTENSEN. Only so far as the chiefs of field division have business together. I would refer cases to his division and he would refer cases to mine to save expense—

Mr. GRAHAM. That was a reference by letter?

Mr. CHRISTENSEN. Yes, sir.

Mr. GRAHAM. After he was separated from the service how long were you with him, in his company, or associated with him?

Mr. CHRISTENSEN. I was not with him at all after he was dismissed, because he left the city and has been away all the time.

Mr. GRAHAM. Your personal acquaintance with him, then, is merely casual?

Mr. CHRISTENSEN. You might say so; yes, sir. Of course we came into close personal contact in some cases at the desks when we were together. We would be together for lunch, and such as that.

Mr. GRAHAM. Quite a little while ago, in one of your answers to Mr. Brandeis, you said in substance that you considered Glavis capable of anything.

Mr. CHRISTENSEN. Well, only from what——

Mr. GRAHAM. When you made that answer, did you base it on your personal knowledge, or what you had learned from others?

Mr. CHRISTENSEN. Just from what I have learned here since he was dismissed.

Mr. MADISON. I would just like to ask one question, or probably two. Mr. Christensen, do you know Andrew Kennedy pretty well?

Mr. CHRISTENSEN. Quite well; yes, sir.

Mr. MADISON. Tell the committee what his general reputation is for being a truthful man or otherwise.

Mr. CHRISTENSEN. It is good as far as I know.

Senator FLINT. Would that be proper to go into? Suppose he said it was bad, then Mr. Kennedy would have to come back and bring witnesses to testify. It does not seem to me to be fair to put a man's reputation in controversy without the witness himself being here.

Senator FLETCHER. He did not say it was bad.

Senator FLINT. But I am assuming that he might testify to that.

Mr. BRANDEIS. There is one question that I omitted to ask. You testified yesterday, Mr. Christensen, that Mr. Parks had said to you that he did not feel that he could go through that box; he did not have any right to do it; that it must be done by one in authority. What authority did you conceive you had to break into those various boxes and barrels which you said you broke into?

Mr. CHRISTENSEN. I do not think I testified to that. You must have gotten that impression from Mr. Parks's testimony.

Mr. BRANDEIS. I know he testified to it but I thought you also testified to that effect. I may be able to turn to it.

Mr. MADISON. Would it be important, Mr. Brandeis, in view of the fact that he did break in, and, after all, it is wholly a matter which affects the credibility of Mr. Glavis.

Mr. BRANDEIS. I do not think that it is important, and I will not pursue it.

Mr. MADISON. I do not think so. Let us not take up any more time about that.

Senator PURCELL. Just one question, Mr. Christensen. Have you put into the record all the correspondence that passed between you and any other officer pertaining to your succeeding Glavis?

Mr. CHRISTENSEN. Pertaining to succeeding him?

Senator PURCELL. Your succeeding him or taking charge, your relieving him, in other words?

Mr. CHRISTENSEN. You mean in the correspondence in relation to this investigation?

Senator PURCELL. Yes.

Mr. CHRISTENSEN. Yes, sir; that includes all my correspondence.

Senator PURCELL. That is, all the correspondence that passed between you and any other person relative to your relieving Glavis is in evidence here?

Mr. CHRISTENSEN. Well, of course, there might be other letters that referred to something else. These letters that I have introduced here refer to this investigation.

Senator PURCELL. What I mean is, do you know whether or not there is now in evidence all the correspondence that passed between you and the General Land Office or anybody connected with it relating to your relieving Glavis as chief of division at Seattle?

Mr. CHRISTENSEN. Of course, there might have been other letters or correspondence somewhere else that I do not know anything about. The question is very general. I do not know that I know exactly what you refer to. You say relieving Glavis. Of course, this refers to the investigation.

Senator PURCELL. I mean with reference to your going up to Seattle to take charge of that office and relieving him.

Mr. CHRISTENSEN. No, sir; except I had a telegram from Schwartz to myself to proceed to Seattle and my acknowledgment of the receipt of that.

Senator PURCELL. That is not in evidence?

Mr. CHRISTENSEN. No, sir; that is not in evidence.

Senator PURCELL. Did you have any conversation with any persons before you went to Seattle?

Mr. CHRISTENSEN. No, sir.

Senator PURCELL. About going up there to relieve Glavis?

Mr. CHRISTENSEN. No, sir.

Senator PURCELL. No conversation?

Mr. CHRISTENSEN. No, sir.

Senator PURCELL. That is all.

Mr. BRANDEIS. Mr. Vertrees, Mr. Sleman has just asked me in regard to the witnesses, Miss Shartell, Mr. Parks, and Mr. O'Neill, who have been retained at my request until the evidence that you might have to introduce on the subject of these letters shall have been disposed of. Have you now finished all the evidence that you are going to give in relation to those letters?

Mr. VERTREES. Yes; we are through with those witnesses.

Mr. BRANDEIS. I mean, if this closes all the evidence, I see no reason for keeping these three witnesses. If not, I shall retain them here until after you close.

Mr. VERTREES. I suppose Mr. Christensen also. They are all here from Seattle.

Mr. BRANDEIS. The three to whom I now refer are Miss Shartell, Mr. Parks, and Mr. O'Neill. If you have finished with your evidence on this subject, I will withdraw my request that these three witnesses be retained.

Mr. VERTREES. I have, sir.

Mr. BRANDEIS. I desire that Mr. Spaulding be retained, as I have stated before.

The CHAIRMAN. Are you both satisfied to have Mr. Christensen, Mr. Parks, and Mr. O'Neill, and Miss Shartell discharged?

Mr. VERTREES. As soon as I ask Mr. Christensen a few questions.

The CHAIRMAN. Very well; go ahead.

Mr. VERTREES. You have been asked about Andrew Kennedy, Mr. Christensen, and you were also asked about your relations with Mr. Glavis. Were your relations with him friendly or unfriendly up to the time you superseded him?

Mr. CHRISTENSEN. They were friendly.

Mr. VERTREES. Had anything ever happened between you in any way?

Mr. GRAHAM. Quite a little while ago, in one of your answers to Mr. Brandeis, you said in substance that you considered Glavis capable of anything.

Mr. CHRISTENSEN. Well, only from what——

Mr. GRAHAM. When you made that answer, did you base it on your personal knowledge, or what you had learned from others?

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Mr. CHRISTENSEN. Of course, there might have been other letters or correspondence somewhere else that I do not know anything about. The question is very general. I do not know that I know exactly what you refer to. You say relieving Glavis. Of course, this refers to the investigation.

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Mr. BRANDEIS. I desire that Mr. Spaulding be retained, as I have stated before.

The CHAIRMAN. Are you both satisfied to have Mr. Christensen, Mr. Parks, and Mr. O'Neill, and Miss Shartell discharged?

Mr. VERTREES. As soon as I ask Mr. Christensen a few questions.

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Mr. CHRISTENSEN. They were friendly.

Mr. VERTREES. Had anything ever happened between you in any way?

Mr. GRAHAM. Quite a little while ago, in one of your answers to Mr. Brandeis, you said in substance that you considered Glavis capable of anything.

Mr. CHRISTENSEN. Well, only from what—

Mr. GRAHAM. When you made that answer, did you base it on your personal knowledge, or what you had learned from others?

Mr. CHRISTENSEN. Just from what I have learned here since he was dismissed.

Mr. MADISON. I would just like to ask one question, or probably two. Mr. Christensen, do you know Andrew Kennedy pretty well?

Mr. CHRISTENSEN. Quite well; yes, sir.

Mr. MADISON. Tell the committee what his general reputation is for being a truthful man or otherwise.

Mr. CHRISTENSEN. It is good as far as I know.

Senator FLINT. Would that be proper to go into? Suppose he said it was bad, then Mr. Kennedy would have to come back and bring witnesses to testify. It does not seem to me to be fair to put a man's reputation in controversy without the witness himself being here.

Senator FLETCHER. He did not say it was bad.

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Mr. CHRISTENSEN. Pertaining to succeeding him?

Senator PURCELL. Your succeeding him or taking charge, your relieving him, in other words?

Mr. CHRISTENSEN. You mean in the correspondence in relation to this investigation?

Senator PURCELL. Yes.

Mr. CHRISTENSEN. Yes, sir; that includes all my correspondence.

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Mr. CHRISTENSEN. They were friendly.

Mr. VERTREES. Had anything ever happened between you in any way?

Mr. CHRISTENSEN. No, sir.

Mr. VERTREES. Now, it was stated in a question that was put to you, if you did not know that Andrew Kennedy had said that he put all those things in that box. Now, I will ask you in point of fact, whether you have read Mr. Kennedy's deposition?

Mr. CHRISTENSEN. No; I do not believe that I have.

Mr. VERTREES. Did you hear him depose?

Mr. CHRISTENSEN. I did. I think I was in the room most of the time. I may not have heard all of it.

Mr. VERTREES. Did not Mr. Kennedy expressly state—and his evidence, is found at pages 1030 to 1031 of the record—that the box was partly filled with books and other stuff before he put anything in it?

Mr. CHRISTENSEN. I do not know what he said.

Mr. VERTREES. You do not know what he said?

Mr. CHRISTENSEN. No, sir.

Mr. VERTREES. I call the committee's attention to pages 1031 and 1047 on that point now, in order that they may keep the connection. Mr. Kennedy says:

The box was open and partly filled with books and other stuff. I did not look at them or examine them to see what they were.

And another question he says:

I just recall that I did not look at anything only to see that there were some books in the box and a mirror that could be seen.

Now, another thing; when was Mr. Glavis discharged from the service?

Mr. CHRISTENSEN. On September 18.

Mr. VERTREES. Do you not know that he had the key to that grand jury room and did not turn it over to Mr. Kennedy until the night of the 22d of September? Did Mr. Kennedy state that?

Mr. CHRISTENSEN. That is my understanding; yes, sir.

Mr. VERTREES. So that it is not true, as assumed in the questions, that during this time that the custodian of that house had the key?

Mr. CHRISTENSEN. I do not think that that question has been asked.

Mr. VERTREES. Is it not a fact that Mr. Glavis left there on the 23d, or do you remember that?

Mr. CHRISTENSEN. I do not know when he left. I just only know from hearsay.

Mr. VERTREES. Now, I want to ask you whether or not any attempt was made to get copies from the Forestry Service. I here call to your attention a letter dated October 23, 1909, which has been sent up here under the calls of the committee, written to Mr. A. C. Shaw, law officer of the Forest Service, Seattle, Wash., written from Seattle, Wash., October 25, 1909, by Mr. James M. Sheridan, attorney for the Government, and ask you first who is Mr. A. C. Shaw; what relation did he have to the Forestry Service at that time?

Mr. CHRISTENSEN. I think he was called the assistant law officer of the Forestry Service.

Mr. VERTREES. Where was he then located?

Mr. CHRISTENSEN. He had headquarters in Washington, but he was at that time in Seattle in connection with business, I suppose.

Mr. VERTREES. Now, I will ask you in this connection to read that letter to the committee.

Mr. CHRISTENSEN (reading):

(To Mr. Schwartz. J. M. S. Special.)

SEATTLE, WASHINGTON,
October 23, 1909.

Mr. A. C. SHAW,
Law Officer, Forest Service, Seattle, Washington.

SIR: Enclosed you will find a memorandum dated Seattle, Washington, October 21, 1909, wherein I receipt to you for all of papers which you delivered to me at my office in room 219, Federal Building, Seattle, Washington, on the morning of October 19, 1909, in a large blank manila envelope, on the exterior of which I wrote a memorandum dictated by you, in response to my questions, showing the contents thereof. This memorandum reads:

"Originals, principally, enclosed with copies of some of the papers in Cunningham coal cases, Alaska, by Mr. Glavis to Forest Service, all delivered to Forest Service by Mr. Glavis at one time. Mr. Shaw does not know that Forest Service still has copies of these papers, though the Forest Service may have them. Mr. Shaw has one other letter which he will bring later. (Sgd.) James M. Sheridan.

"Additional letter above referred to was this date delivered to me. (Sgd.) J. M. S., Oct. 19, 1909."

I invite your attention especially to numbers 2 and 3 of the memorandum of receipt herewith, under the caption "Cunningham coal case papers." These papers are material evidence in the investigation at present being made by me of what is known as the Cunningham group of coal claims of Alaska, and hence it is imperative that I know their complete history, so that they may be properly accounted for when introduced in evidence. To this end I would like to have the following information concerning them:

1. When did these papers come into your possession and how? In this connection please set out fully all that you know concerning them.
2. For what purpose were they delivered to you, and what use has been made of them? In this connection I would like to have every detail within your knowledge.
3. Quoting from the memorandum written by me on the exterior of the large blank manila envelope in which these papers were inclosed at the time of their delivery to me by you, you stated that they were—

"Originals, principally, inclosed with copies of some of the papers in the Cunningham coal cases, Alaska, by Mr. Glavis to Forest Service, all delivered to Forest Service by Mr. Glavis at one time."

For what purpose, and when, did Mr. Glavis deliver copies of these papers to the Forest Service, and where are these copies at the present time? In this connection please set out fully the papers copies of which were furnished to the Forest Service by Mr. Glavis.

You will appreciate, of course, that these papers and all the others which you delivered to me, and which are herein receipted for, are properly records of the General Land Office, and should be on file here and not elsewhere; and in case they are withdrawn from the Land Office files we should be fully advised as to the purpose of such withdrawal and the whereabouts of such papers at all times.

You informed me at the time you delivered these papers to me that you could not recall when they had been delivered to the Forest Service by Mr. Glavis, and, furthermore, that you did not know whether the copies delivered to you by Mr. Glavis were still in the possession of the Forest Service. I assume, however, that the Forest Service, being a methodical governmental department, will be able to account for records coming into its possession, the manner in which it acquired them, and the use to which they have been put. Therefore if you, personally, can not give me this information, you will greatly oblige me by obtaining it from some of the other officials of the Forest Service, who will undoubtedly be familiar with the details.

I assume, Mr. Shaw, that you will appreciate how vital it is that I should have full and complete information concerning every record relating to the investigation at present under way, in order that I may properly protect the Government's interest. Had you, at the time you delivered these papers, given me full details concerning their history, it would not, of course, be necessary to ask this information in the present form. However, the intelligent performance of my duties as attorney for the Government in this case makes it paramount that I have full information on such matters;

and this is the purpose for which this letter is written. The status of this case at the present time is such that it is imperative that I have this information immediately, and I hope you will be able to give me a prompt and full reply. This reply should be in writing, so that our records may be self-explanatory.

Very respectfully,

JAMES M. SHERIDAN,
Attorney for the Government

Mr. VERTREES. I will ask that that letter go in, Mr. Chairman.

The CHAIRMAN. It is admitted.

Mr. VERTREES. Now look at page 2811 of the record, Mr. Christensen, the printed record—I say look at it, please.

Mr. CHRISTENSEN. What page?

Mr. VERTREES. 2811. On that page I find a list of books and papers and affidavits and other property which you found at the time of this search in one of the barrels you entered in this government building. Look at the list there; are there not 14 affidavits mentioned? To what do they relate?

Mr. CHRISTENSEN. I am not sure. I think that they relate to some timber and stone entries that were investigated.

Mr. VERTREES. They relate to government cases is the point that I am on.

Mr. CHRISTENSEN. Oh, yes; they relate to government matters.

Mr. VERTREES. So that they were strictly official documents?

Mr. CHRISTENSEN. Yes, sir.

Mr. VERTREES. The bottom one is a "copy of a letter from E. B. Linnen to commissioner, dated February 16, 1906." What is that?

Mr. CHRISTENSEN. That is a copy of a report, if I remember it, made by Mr. Linnen to the commissioner.

Mr. VERTREES. Is that an official document?

Mr. CHRISTENSEN. Yes, sir.

Mr. VERTREES. On page 2812 a number of blank forms I see. The first one is 4-509, 6-142, 4-159. What are they?

Mr. CHRISTENSEN. They are supplies of the General Land Office, official documents, official papers.

Mr. VERTREES. Unused official envelopes. I see a daily report of Glavis, July 22, 1908, to and including June 4, 1909. Is that a government record?

Mr. CHRISTENSEN. Yes, sir.

Mr. VERTREES. I see near the bottom of the page copies of telegrams, Glavis to Bowman and Glavis to clerk, dated June 5, 1909, and found in No. 9 envelope.

Mr. CHRISTENSEN. They are also official.

Mr. VERTREES. I see also on the next page, among the blueprints, one blueprint of township 14 north, range 6 east.

Mr. CHRISTENSEN. These blueprints are also official documents.

Mr. VERTREES. I call your attention particularly to that one for the reason that Mr. Barr testified in reference to one certain piece of land that is mentioned on page 1046, in which he and Glavis were interested together, and that is described by Mr. Barr as township 14 north, range 6 east, on page 1046. Do you know anything about that?

Mr. GRAHAM. Do you mean that, Mr. Vertrees? You read it township 14 north, range 6. This book reads township 6 north, range 14 east. You transposed those numbers.

Mr. VERTREES. No; I mean township 14 north, range 6 east.

Mr. CHRISTENSEN. Township 13 north, range 6 east, is the township, I think, that this land is located on.

Mr. VERTREES. It says on page 1046, township 14 north, range 6 east, in Mr. Barr's testimony.

Mr. CHRISTENSEN. That is evidently correct, then, 14 north, range 6 east.

Mr. VERTREES. You have been asked by some one what use the Government made of these papers, and I understood you to answer that you are now able to say that you do not regard them of great value—that is to say, especially of great value in the Cunningham case. Is that a correct answer—did you make that? Is that true, or how is that?

Mr. CHRISTENSEN. I do not know that they were used in the Cunningham cases.

Mr. VERTREES. Did you take any evidence in that case, or have anything to do with it?

Mr. CHRISTENSEN. No, sir; none whatever.

Mr. VERTREES. But whether they were of great value or little value they were government property, were they not?

Mr. CHRISTENSEN. Yes, sir.

Mr. VERTREES. And there was no way of telling their value until they were discovered and seen, was there?

Mr. CHRISTENSEN. No, sir.

Mr. VERTREES. You made the search you have talked about, spoken of, and testified to during the latter part of 1909?

Mr. CHRISTENSEN. Yes, sir.

Mr. VERTREES. If I understand you correctly, at the time you found them you were not searching for any of these letters at all?

Mr. CHRISTENSEN. That is correct.

Mr. VERTREES. That is all.

Mr. BRANDEIS. I should like——

Mr. VERTREES. I think that should be an end to the examination.

Mr. BRANDEIS. You have put in one letter; I think I should put the reply in to that.

Mr. VERTREES. So far as that is concerned, yes, sir.

Mr. BRANDEIS. That is all I intend to do.

I will not burden the committee by reading it into the record. It is the answer of the Forestry Service to the letter of Mr. Sheridan which has just been read and also the memorandum of papers therein referred to.

Mr. CHRISTENSEN. That memorandum is already in.

Mr. BRANDEIS. It is in?

Mr. CHRISTENSEN. Yes, sir; it was put in yesterday.

Mr. VERTREES. Put in anything that you desire. I only read the letter to show the demand made of the forestry people.

Mr. BRANDEIS. The answer is October 25, 1909. It is a long letter, but there is in it perhaps one brief paragraph or statement that I should like to read. This is on page 292 [reading]:

Because of Mr. Glavis's assurance in his letter of September 18 that your office was well supplied with the originals and copies, I did not feel it necessary to make the offer which I do now, that you can at any time you desire to make an appointment and examine all of the papers which we have, at the office of the Supervisor of the Forest Service, at 834 Central Building of this city. If there are among the papers any which you desire which relate to the Cunningham cases, or to any of the coal cases, you may have either copies or the papers themselves after copies have been made.

2956 INVESTIGATION INTERIOR DEPT. AND BUREAU OF FORESTRY.

(The entire letter is as follows:)

To Mr. Schwartz.]

[United States Department of Agriculture, Forest Service.]

SNOQUALMIE NATIONAL FOREST,
Seattle, Washington, October 25, 1909

Mr. JAMES M. SHERIDAN,
Special Agent, General Land Office, Seattle, Washington.

SIR: Your two letters of October 23 are received.

In reply to your first question: The papers to which you refer were received by me in the regular course of official business soon after their receipt by the Forester, among a number of copies of records transmitted by former Chief of Field Division Glavis to the Forester, by the following letter:

"SEATTLE, September 18, 1909.

"FORESTER,

"U. S. Forest Service, Washington, D. C.

"SIR: I have this day transmitted copies of a great portion of the evidence relating to the Alaska coal cases within the Chugach National Forest. I believe these documents will be of assistance to your representative at the hearings which I understand will take place in the near future. The offices of the Chief of Field Division and the General Land Office are well supplied with copies as well as the originals of these papers.

"Respectfully,

"L. R. GLAVIS,
"Chief of Field Div."

Among the copies, which according to his letter Mr. Glavis only intended to send, were placed, by apparent inadvertence, a few originals, which I returned to you and after they were discovered. The papers delivered to you, and the copies mentioned in your memorandum and in Mr. Glavis's letter, were brought West by me, and since my arrival have been in the joint possession of and have been used by Mr. Pierce and myself for preparing ourselves for the cases, and for no other purpose. Because of Mr. Glavis's assurance in his letter of September 18 that your office was well supplied with the originals and copies, I did not feel it necessary to make the offer which I do now, that you can at any time you desire to make an appointment and examine all of the papers which we have, at the office of the Supervisor of the Forest Service, at 334 Central Building, of this city. If there are among the papers any which you desire which relate to the Cunningham cases, or to any of the coal cases, you may have either copies or the papers themselves after copies have been made. If there are among these papers any which relate to land office matters, or cases unconnected with the national forests, you may have these without our retaining copies. Because of the assurance, however, in the letter, I did not think, nor do I now believe, that there are any papers which do not relate to the coal cases within the Chugach National Forest. The papers are very voluminous, and this is the only way in which I think they can be examined and compared by you.

Second. These papers were delivered to me for the purpose expressed by Mr. Glavis in his letter.

"I believe these documents will be of assistance to your representative at the hearings, which I understand will take place in the near future."

The use which has been made of these papers is as I have stated, to prepare myself and Mr. Pierce for the hearings.

In claims work such as the coal cases in question the duties of the Forest Service officers and the Interior Department officers overlap; and since theretofore the Interior Department has desired the full measure of the assistance of the Forest Service officers copies of records have been freely interchanged.

Quite recently, as Mr. Pierce informs me, Chief of Field Division Comerford delivered to him, upon request, reports of Special Agent Boyer and Special Agent Brinkley, which reports were at a variance and disagreed entirely with reports made by Forest officers, and the recommendations upon such reports were contrary to the recommendation of the Forester.

Mr. Comerford also, without previous request, sends copies of all of his recommendations in Forest Service cases. The cooperation with the Forest Service in respect to my services has been taken advantage of by Chief of Field Division Sharp and former Chiefs Lange and Glavis. I have advised freely and informally with Chief McEniry and O'Hair and former Chief Dixon. I have assisted Mr. E. C. Finney in taking numerous depositions, and have also assisted U. S. attorneys of Wyoming

California, Washington, Oregon, Arizona, and Wisconsin. Mr. Pierce has also assisted U. S. attorneys in Washington and Oregon and has also assisted chiefs of field division in the same States. The assistance furnished in the above cases were not merely nominal, but the full measure of assistance was taken by the Interior Department officials and by the officials of the Department of Justice.

Both Mr. Pierce and myself feel hurt that you should have written us the two letters above referred to and the other letters which we have received here from you, which seem to place our relations on a most formal basis, and to deny the informal conferences which have been the rule in other cases in which we have assisted. We feel particularly hurt, since you never pursued this course with Mr. J. M. Cates, law officer of the Forest Service at Denver, Colorado.

Because of my long service in the General Land Office, my relations with its officers have always been cordial and friendly, and it grieves me to believe that there should seem to be a disposition to establish another basis in these cases. I also regret that in some manner to me unknown the public seems to have gained the impression that we have been slighted in these cases. I refer to an article which appeared in the "Spokane Review" of yesterday. I do not for a moment believe that you are in any way responsible for this article other than for the portion of it charged to you, which is objectionable to us.

Third. I believe you are under a misapprehension regarding the copies which you speak of in your memorandum, now in the joint possession of Mr. Pierce and myself. I do not remember saying that I did not know whether the copies delivered to me by Mr. Glavis were still in the possession of the Forest Service. I do not remember giving you this impression nor does Mr. Pierce. Your question there has been, I think, fully answered by the foregoing. It is impracticable to make a list of the copies, but I hope that my offer to permit examination of them and to supply you with any necessary copies will be satisfactory to you.

In this connection, I desire to call your attention to your memorandum dated October 21. In your memorandum you list as—

First. Letter of instructions to Mr. Gabriel Wingate, c/o U. S. Forest Service, Seattle, Washington, written by Mr. L. R. Glavis and also signed by the district forester, Portland, Oregon, which letter bears the date Portland, Oregon, July 31.

This letter was not among those delivered by Mr. Glavis to the Forest Service. As you were informed by Mr. Pierce at the time the letter was delivered to you on October 9, the letter was prepared by Mr. Glavis after consultation with the district forester and Mr. Pierce. It was then brought over, signed by Mr. Glavis, and signed by Mr. Allen under the word "approved." It was initialed by Mr. Pierce. Mr. Glavis left the carbon of the letter at the time. The letter was mailed from the office of the Forest Service at Portland, and the carbon copy delivered by Mr. Glavis was retained in its file. After you requested it on Wednesday, October 13, of Mr. Pierce, he secured the carbon copy delivered by Mr. Glavis, had copies made for the Forest Service files, and delivered to you the carbon delivered by Mr. Glavis. Your attention was called to this at the time you received the other letters, by Mr. Pierce particularly. I presume in view of this you will desire to amend your memorandum of October 21.

Your second letter, quoting the extract from the "Spokesman Review," is the first intimation that either Mr. Pierce or myself had that the report of Mr. Wingate, or any part of it, had become public. Neither of us, nor any member of the Forest Service, so far as we know, is in any manner responsible for the article.

In conclusion I wish to state that this letter is not written in any spirit of criticism or complaint of your action and that we have the greatest respect for you, personally and officially.

We are here under official orders from our office and with the consent or at the invitation of your department. We are anxious to give such assistance as we may properly under the rules and regulations providing for cooperation between the two departments, and we hope that all friction and misunderstanding may be avoided.

A. C. SHAW,
Assistant Law Officer.

I concur in and endorse the foregoing letter.

CHAS. R. PIERCE,
District Law Officer.

Mr. VERTREES. I understand, now, Mr. Chairman, that Mr. Christensen, with those other witnesses from Seattle, are discharged?

The CHAIRMAN. Mr. Christensen, Mr. Parks, Mr. O'Neill, and Miss Hartell—are you both through with them?

Mr. VERTREES. Yes, sir.

The CHAIRMAN. Both sides?

Mr. BRANDEIS. Yes.

The CHAIRMAN. If so, they will be discharged.

(The witness was thereupon excused.)

The CHAIRMAN. You may call your next witness.

Mr. VERTREES. Mr. Christensen calls my attention to the fact that Mr. Sheridan has not been discharged, and he will speak as to some matters. I was in error in saying that I had no more evidence, but there is none as to the discovery of those papers.

Mr. BRANDEIS. Mr. Sheridan has nothing whatever to say in regard to the discovery of the papers?

Mr. VERTREES. No.

The CHAIRMAN. Is he to be discharged, too?

Mr. BRANDEIS. No; he has not testified yet.

Mr. VERTREES. I was just correcting a statement I had made.

TESTIMONY OF HON. FRANK PIERCE, ASSISTANT SECRETARY OF THE INTERIOR. •

Hon. Frank Pierce, having been first duly sworn by the chairman, testified as follows:

Mr. VERTREES. This is Mr. Frank Pierce, I believe?

Mr. PIERCE. Yes, sir.

Mr. VERTREES. Where do you reside, Mr. Pierce?

Mr. PIERCE. Salt Lake City, Utah.

Mr. VERTREES. What official position do you hold?

Mr. PIERCE. I am First Assistant Secretary of the Interior, and ex officio Acting Secretary during the absence of the Secretary.

Mr. VERTREES. How long have you held that position?

Mr. PIERCE. Since the 1st day of November, 1907.

Mr. VERTREES. Prior to that time where did you live, and what was your vocation?

Mr. PIERCE. Salt Lake City; attorney at law.

Mr. VERTREES. So you have been First Assistant Secretary, as you have stated, since the date you have mentioned continuously. Have you?

Mr. PIERCE. Yes, sir.

Mr. VERTREES. I wish you would state in a general way to the committee the duties of the Secretary of the Interior?

Mr. PIERCE. The duties of the Secretary of the Interior are very many. The Interior Department consists of several bureaus. First, the General Land Office—do you want me to say anything about the General Land Office?

Mr. VERTREES. Yes; go on in a general way.

Mr. PIERCE. The General Land Office has supervision and control of the disposition, under the law, of the public lands in the States and Territories of the United States and in Alaska; the next bureau is the Indian Bureau, which has control of the Indians under the governmental control; the next bureau is the Bureau of Pensions, which pays out the pensions to the veterans of the various wars; the next bureau is the Patent Office, which issues patents on inventions and copyrights and work along that line; the next bureau is the Bureau of Education, which has charge of the educational work under the control of the United States; the next bureau is the Geological

Survey—while the Geological Survey is not technically a bureau, nevertheless it is administered as if it was a technical legally constituted bureau—which examines and classifies the public lands of the United States; the next bureau is the Reclamation Service, which is not technically a bureau, but under the direct control of the Secretary of the Interior. This Reclamation Service has charge of the arid public lands, irrigating the arid public lands in the United States, and is doing very extensive work along that line under the act of 1902.

In addition to these old, well-established bureaus, we have many other departments and many other matters under our control. For instance, the Territories, consisting of Alaska, Hawaii, New Mexico, Arizona, the national parks and reservations. The most important of these national parks are the Yellowstone National Park in Wyoming and Montana, and the Yosemite Park in California. There are many other small parks, but these two are the most important.

Mr. VERTREES. And the Hot Springs Reservation?

Mr. PIERCE. Yes, sir; I was coming to that. In addition to the parks we have control and management of the Hot Springs Reservation, at Hot Springs, Ark. We have control of the bird reservations, created by executive order and otherwise, and the preservation of the reserves created for the preservation of American antiquities; the different eleemosynary institutions; the Government Hospital for the Insane, situated in the District of Columbia; the Freedmen's Hospital, in the District of Columbia; a supervisory control over Howard University; a supervisory control over the Columbian Institution for the Deaf and Blind; and many, many other duties along that line. The truth of the matter is that in passing laws, if there is no convenient department to put the work upon, they put it into the Interior Department as the proper place to administer it.

Mr. MADISON. It is the government dumping ground, is it not?

Mr. PIERCE. I would not use that language, Mr. Madison; but I would not deny it if you stated it.

The CHAIRMAN. Where is that bird reserve located, Mr. Pierce?

Mr. JAMES. That is at the town of Nelson, in Alaska, isn't it?

Mr. PIERCE. There were several created. I can not tell you where they all are, but I remember one in the State of Wyoming. I remember that very distinctly, because Representative Mondell claimed that there was no authority in law for the establishment of a bird reserve, and that is the reason I remember that one.

In the administration of the various matters that come before the Department of the Interior we expend, did expend, for instance, in the year closing the 30th of June, 1909, about \$193,000,000; that is about the amount of money that is expended per annum; it varies somewhat; it is sometimes a little over and sometimes a little less; but the duties of the Department of the Interior are burdensome and very manifold.

Mr. VERTREES. Your position, that of first assistant, in addition to the duties which you perform ex officio in the absence of the Secretary of the Interior, are there any special duties that are appointed or assigned to you that you generally carry on? If so, what are they?

Mr. PIERCE. The law creating the position of First Assistant Secretary of the Interior says that he shall perform such duties as may be assigned to him by the Secretary. It also provides that the first assistant shall be Acting Secretary during the absence of the Secretary.

So that during the absence of the Secretary all of the duties of the department are upon the Acting Secretary, and during the presence of the Secretary, the First Assistant Secretary acts under general orders usually.

Mr. VERTREES. To get your idea of the routine business that has to be done, I wish you would state to the committee on an average about how many letters it falls to your part to sign daily?

Mr. PIERCE. I would not put that letters. I would like to say—

Mr. VERTREES. Let me qualify that then.

Mr. PIERCE. I would like to say letters and papers.

Mr. VERTREES. I would say letters, documents, and papers.

Mr. PIERCE. I suppose I am called on the year around to sign 900 to 1,000 different papers and documents per day.

Mr. VERTREES. They are prepared, of course, in other department and by other persons for the most part, are they?

Mr. PIERCE. The method of preparation of papers is this: The Land Office prepares its letters and papers for the signature of either the Secretary, the First Assistant Secretary, or the Assistant Secretary according to the existing assignment of business; they are sent over to the department and are there examined, and when they are finally examined they are passed up either to the Secretary, the First Secretary, or the Assistant Secretary for signature, in accordance with the order of business. The same thing that I have stated with reference to the Land Office is also true with all the other bureaus. That is the orderly course of procedure. These are the ordinary papers that do not require any particular attention; papers that are passed upon and do not require any particular attention—that is, answers to inquiries and matters of that kind. But all matters which involve any questions of law are sent into our law bureau for examination before they are submitted to one of the secretaries for signature. The questions of policy that come before the department are all referred to the Secretary himself, unless he has declared a line of policy upon any particular subject. If he has, after he has declared his line of policy, the Assistant Secretary or the First Assistant follows out that line of policy.

Mr. VERTREES. You have spoken of your law bureau. What is that? Describe that.

Mr. PIERCE. We have in the Interior Department a law bureau consisting of the Assistant Attorney-General of the Interior Department, as he is called, at the head of this bureau. This officer is an officer of the Department of Justice, who gets his pay from the Department of Justice, but is assigned to the Interior Department and keeps his office in the Interior Department as a matter of convenience to that department. That is the head of the law bureau of our department.

Mr. VERTREES. Who is that gentleman?

Mr. PIERCE. That gentleman is Mr. Oscar Lawler, of Los Angeles, Cal., who was appointed in April, 1909.

Following that up we have a law force of about 25 persons, under the direct and supervisory control of the Assistant Attorney-General for the Interior Department. This law force examines nearly all of the law questions; in fact, I should say substantially all of the law questions that are passed upon finally by one of the secretaries.

In giving the number in our law bureau of 25, that is simply an estimate; there may be a few more or there may be a few less; it varies according to the quantity of work.

There is a board of pension appeals, consisting of 12 members, who pass upon appeals coming direct from the Commissioner of Pensions to the Secretary's office. It has heretofore required about 12 men to handle that class of business.

While I am on the subject of appeals, we have to handle in the course of a year very nearly three thousand appeals coming from decisions of the Commissioner of the General Land Office, appealed over to the department. Those cases are referred, as I stated before, to the law force, and are written up usually by the law force, and it is my work to examine those. If there is any new question of law that has to be determined, I usually give it as much of my attention as my time will allow. But the ordinary appeal cases, where they depend upon the questions of law that have already been decided, or depend solely upon questions of facts, I have no time to give them my attention, and do not give them serious attention, but adopt such views or decisions as are prepared in the law bureau of our department. You can see that that course naturally has to be pursued in order to get our business behind us as it occurs from day to day.

Mr. VERTREES. Mr. Pierce, have you been called upon in your position to acquaint yourself with the laws of Alaska in reference to coal lands?

Mr. PIERCE. If you will permit me, I was not quite through with my other answer.

I want to present the order of assignment of business among the secretaries, the order in which our business is done. It is the order dated March 15, 1909, and is found on page 209 of the Senate document No. 248.

Mr. VERTREES. We would like to have that printed.

The CHAIRMAN. It is admitted.

(It is as follows:)

DEPARTMENT OF THE INTERIOR,
Washington, March 15, 1909.

ORDER.

Until further ordered the business of the department will be referred for action to the following officers:

To the Secretary: All matters not covered by assignments hereinafter made to the First Assistant Secretary and the Assistant Secretary. Questions on matters before these officers which involve a reversal of existing decisions of the department or modification or change in the policy of the department, or which are of unusual importance, shall be brought by said officers to the attention of the Secretary before final action. All communications addressed to the President; all communications addressed to members of the House and Senate and the heads of other departments not connected with the work of the First Assistant and the Assistant Secretaries.

To the First Assistant Secretary: All matters from the General Land Office, including appeal cases, and all matters from the Indian Office.

All matters relating to the national parks and the Hot Springs Reservation, to miscellaneous contracts and bonds, to the signing of requisitions for Treasury warrants, advertising, other than that relating to the Geological Survey and the Reclamation Service.

The approval of all credits of reclamation water-right charges on farm units, the admission to practice before the department of attorneys and agents, all matters relating to the disbarment of attorneys and agents from practice before the department, and the disposal of the work assigned to the Secretary and the Assistant Secretary in the absence of those officials.

To the Assistant Secretary: All matters from the Pension Office, all correspondence relating to the business of the Patent Office, including appeals from the administrative action of the Commissioner of Patents; all matters from the Bureau of Education;

all matters relating to the eleemosynary institutions of the District of Columbia including the Government Hospital for the Insane; all matters relating to buildings in the District of Columbia required for official use; the indorsement of all money orders and checks made payable to the Secretary of the Interior received in payment for certified copies of records or papers on file in the department or any of its bureaus; all matters relating to leaves of absence and the ordinary detail matters of appointments and promotions (unless of special or unusual importance); to stationery and supplies and contracts and bonds relating thereto, the approval of expense and transportation accounts of inspectors, special agents, special examiners, pension agents and other officers of the department and its bureaus, and matters relating to certified copies of papers, as per sections 460 and 882, U. S. Revised Statutes.

R. A. BALLINGER,
Secretary

FRANK PIERCE,
First Assistant Secretary.

JESSE E. WILSON,
Assistant Secretary.

CLEMENT S. UCKER,
Chief Clerk.

JAMES I. PARKER,
Assistant to the Secretary.

Mr. VERTREES. My question was whether or not you consider yourself reasonably familiar with the coal laws of Alaska?

Mr. PIERCE. I am reasonably familiar, I think; I know them in a general way.

Mr. VERTREES. Are you reasonably acquainted with the Alaska situation so far as its minerals in general and coal in particular are concerned?

Mr. PIERCE. I know considerable about it from reading various documents, and information I have gathered in the department.

Mr. VERTREES. Did you, at any time, give a hearing to Alaska claimants on the situation?

Mr. PIERCE. Oh, yes.

Mr. VERTREES. If so, state when that was.

Mr. PIERCE. On the 9th of March, 1909, I gave a hearing at the request of the Secretary to Mr. Falcon Joslin, of Fairbanks, Alaska one of a committee appointed by the American Mining Congress to present the coal situation in Alaska to the Interior Department. The hearing was taken down and is printed on pages 190 to 203 of Senate Document No. 248, and is published in the record of the hearing on pages 174 to 183, inclusive. In my report to the Secretary there are some exhibits attached. They were not all printed in the testimony in the record of this hearing on page 174 to 183, inclusive, but I find a large number of these documents that were attached as exhibits were printed in the latter part of yesterday's proceedings before this committee, so that I think all the exhibits attached to that hearing and the report that I made to the Secretary are already in the record.

Mr. VERTREES. Now, is it not true that during Mr. Garfield's administration, and before Mr. Ballinger became Secretary of the Interior, a great many Alaska people visited Washington and presented the matter of the necessity for relief to the office of the Department of the Interior—that is, to the Secretary and his assistants?

Mr. PIERCE. Nearly all of 1908, up to the time of the passage of the Alaska coal act of May 28, 1908—during nearly all of that time—various Alaska people were here presenting to the Secretary, and to a committee of Congress, the need of relief on the coal laws in Alaska.

In further answer to your question, Mr. Vertrees, I want to say that none of these matters upon that relief came before me directly, except as incidentally I met the men, but I did not discuss the matter with them, although I knew in a general way what they claimed was their trouble.

Mr. VERTREES. Now, I want to call your attention to an act of Congress which appears in your report or statement to the President, and is printed at page 171 of Senate Document No. 248—a very brief clause there—enacted March 4, 1909, which I would ask to be printed in the record. It is the act appropriating \$1,000,000; 750,000 for bringing up the work of the General Land Office so as to make the same current.

Mr. PIERCE. The act of March 4, 1909, provides as follows:

Depredations on public timber, protecting public lands, and settlement of claims for swamp land and swamp-land indemnity: To meet the expenses of protecting timber on the public lands, and for the more efficient execution of the law and rules relating to the cutting thereof; of protecting public lands from illegal and fraudulent entry or appropriation, and of adjusting claims for swamp lands, and indemnity for swamp lands, one million dollars, to be immediately available, of which sum seven hundred and fifty thousand dollars is for the purpose of bringing up the work of the General Land Office hereunder so as to make the same current.

That was the appropriation, as I have stated, of March 4, 1909, which gave us \$1,000,000 for doing that work.

Mr. VERTREES. Mr. Ballinger became Secretary of the Interior—

Mr. PIERCE. On the 6th day of March, 1909.

Mr. MADISON. Have you succeeded in bringing it up so that it is current now?

Mr. PIERCE. We have not any final report from the Commissioner of the General Land Office. They are working very actively upon that work of bringing it up to date.

Mr. MADISON. I really asked it as a matter of information, because it really affects the people out in my country some.

Mr. PIERCE. I am not able, Mr. Madison, to say. What I do say, that they are working very hard to do it, but we have not got the work in Alaska up to date, or anywhere near it.

Mr. MADISON. I am referring to the country generally—whether you have the work of the General Land Office up.

Mr. PIERCE. It is well under way, but I could not tell you, because there is new work required all the time. They are doing lots of good work all the time; very earnest, active work all the time.

Mr. VERTREES. Do you remember how many cases were suspended at the Land Office at that time?

Mr. PIERCE. I do not want to answer that question. Those are exact details that can be given by Mr. Schwartz or Mr. Dennett, but there were many thousands.

Mr. VERTREES. Over 30,000, were there not?

Mr. PIERCE. Over 30,000.

The CHAIRMAN. Suspended?

Mr. PIERCE. Over 30,000 suspended at the time this appropriation March 4, 1909, was made.

Mr. VERTREES. Now, that appropriation having been made March 4 and Mr. Ballinger having come in March 6, did he give any orders to adopt any policy with reference to these claims, and to these land questions in general? If so, what was it?

Mr. PIERCE. Almost immediately after Mr. Ballinger assumed the duties of Secretary of the Interior he announced that his policy would be to bring up all suspended cases, all public land cases, to date, as speedily as possible, and directed the entire force of the Land Office to proceed along that line.

Mr. VERTREES. What was your first knowledge—

Mr. PIERCE. And I want to state further that he said then that he wanted as much accomplished with this million dollars as possible. Later in the season, about the 1st of July, when the annual estimates for appropriations were made up for the succeeding year, Mr. Ballinger made his estimate at one-half of the million, \$500,000, for the next year, and stated he thought he could get along with that amount. He stated that he wanted as much done with the million dollars as possible, hoping, of course, that the million dollars would bring the work up to date.

Mr. VERTREES. I come now especially to the inquiry about some claims—what we know as the Cunningham claims—you have heard of those claims, have you not?

Mr. PIERCE. Yes, sir.

Mr. VERTREES. What knowledge had you, if any, of those claims at the time Mr. Ballinger became Secretary of the Interior?

Mr. PIERCE. Nothing, except a general knowledge. I had heard that mentioned in the department; that is all; but I had never, so far as my recollection goes, been in any conference or consultation with reference to them.

Mr. VERTREES. What was your first definite knowledge, or your first conference, or official connection with respect to these claims—or rather, before I ask what it was, I will ask you when it was?

Mr. PIERCE. About the middle of May, 1909.

Mr. VERTREES. Now, state the circumstances and what occurred at that time.

Mr. PIERCE. About the middle of May, 1909, ex-Governor Miles C. Moore, one of the Cunningham claimants, came to Washington and called upon the Secretary. The Secretary sent for me and told me and also ex-Governor Moore—told both of us—that he had been called into consultation over these Cunningham cases between the time he resigned as Commissioner of the General Land Office, March 4, 1908, and the date that he assumed the duties of Secretary of the Interior. He wanted me—he directed me—to assume all charge of those Cunningham claims on all matters relating to them that came up in the department. That was all the talk we had then. My office is the next suite of rooms to the Secretary—his office would be in the southeast corner of the department; then there is an entrance room, and the room next west of that—my suite is next west of the anteroom. I have two rooms there.

I took Governor Moore over into my office and sent for Mr. Finney. I knew that Governor Moore's matters related to Alaska—the Cunningham case. I was told they were in Alaska, or knew it, anyway. The reason I sent for Mr. Finney is this—

Mr. VERTREES. That is Mr. E. C. Finney?

Mr. PIERCE. Yes, sir; Mr. E. C. Finney.

Mr. VERTREES. What was his relation to the Department of the Interior?

and angered, and talked a good deal then right in front of Mr. Finney and me and rehearsed the troubles that he had had, and he finally calmed down a little and he said substantially this:

The Government has had our money, over \$50,000, for two or three years. Nothing is being done looking toward the issuing of these patents—

Mr. VERTREES. Mr. Pierce, would you just let me say there for the purpose of making the record clear, the letter to which Mr. Pierce refers is found at pages 238 and 748 of the record. Now, proceed, Mr. Pierce.

Mr. PIERCE. I would like to have the last part of my statement read, please.

(The reporter read the concluding portion of Mr. Pierce's statement, as follows:)

The Government has had our money, over \$50,000, for two or three years. Nothing is being done looking toward the issuing of these patents.

Mr. PIERCE. I having told him that he could not have his patents from that record, then he said, "What shall we do"—asked what could be done; and I told him that I would direct the General Land Office to have charges filed against the patents and that he should have a speedy trial of the issues. I told him that.

Now, at that time the affidavit and record against the Cunningham cases, these charges against the Cunningham record were in a large number of affidavits, the Cunningham book, and a great mass of stuff, but there was no specific charge formulated to which anybody could plead, and I then told him that I would direct the General Land Office to frame up charges and serve them upon him, and that if after the service of these charges upon him he decided—wanted a hearing—he could have a hearing; that if he decided he did not want a hearing the entries would be canceled as a matter of course. I told him then also that it was the policy of the Secretary of the Interior, and that he had so directed, to speedily bring all suspended cases in the United States and Alaska, wherever they were, up to date, under the appropriation made March 4, 1909.

Now, I would like very much in support of the statements that I have made to call attention to the second letter which Governor Moore wrote to the Secretary, which is found on page 179 of Senate Document 248, and on page 239 of the record in this case, written by Governor Moore from the Congress Hotel and Auditorium Annex, Chicago, May 29, 1909, in which he says:

Assistant Secretary Pierce does not understand the case very well, and has been influenced by Glavis, who, having done some disreputable things and become involved in a controversy with Cunningham, is prejudiced and wants vindication.

That is substantially, so far as I now recall it, all of the conversation that Governor Moore had with me at that time, and he went away very much disappointed.

Mr. VERTREES. Now, Mr. Pierce, I am going to interrupt the narrative just there to ask one general question, and then I will come back to it. You have stated that the Secretary, under the circumstances detailed, turned over the control and direction and management of these Cunningham cases to you. I want you to state now to this committee if Secretary Ballinger from that time to this has ever in any way, directly or indirectly, interfered with your control, your

Mr. Finney went over and was gone some time; probably half a day; I do not know how long, I could not tell, and came back with Mr. Glavis—Mr. L. R. Glavis, who has testified in this case—and we three, Finney, Glavis, and myself, spent a long time in examining the records of these Cunningham cases.

I want to say here before I pass on, lest I may forget it, that I did not personally know Mr. Glavis at that time, did not know him by sight. He came in that day with Mr. Finney and we had a conversation for some time, we three, Finney, Glavis, and I, about the Cunningham coal cases, and that time was the only time that I ever had any conferences or talks with Mr. Glavis whatever. I told Mr. Glavis at that time, as a preliminary statement, for the reason why I was taking up these cases, that the Secretary had told me in the presence of Governor Moore that he had been called into consultation about these Cunningham cases between the time he resigned his office as Commissioner of the General Land Office and the time he assumed his duties as Secretary, and that the Secretary had directed me to take charge of all matters in the department relating to these Cunningham coal cases. That is the only time that I ever had any talk with Mr. Glavis either with reference to the Cunningham coal cases or with reference to the laws of Alaska, or the act of May 28, 1908.

After we had gone over the record somewhat carefully—I do not mean to say that it is carefully enough for me to give the exact details as to what was in the record—I made up my mind that no patents should be issued upon that record as it stood, and so told both Mr. Glavis and Mr. Finney. Mr. Glavis had with him the Cunningham books. I said to them: "There is a prima facie case made here, and it will have to be tried out before any patents will be issued."

The next day, pursuant to appointment, Governor Moore came back, and I sent for Mr. Finney and he came in.

Senator FLETCHER. Mr. Glavis had the Cunningham journal?

Mr. PIERCE. Yes, at that time, or a copy of it. It was there before us.

The CHAIRMAN. You mean the book?

Mr. PIERCE. Yes; the Cunningham book. That was before me at the time we had the conference with Glavis and Finney—at the time I had the conference with them; the time we three were together and had the conference, and Moore had been dismissed. He came back the next day pursuant to appointment. I had set an hour for him to return. When ex-Governor Moore came back the next day I said to him that I had gone over the record, and I told him that a prima facie case appeared in this record, and that he could not have his patents on that record.

And in this connection I would like to call attention to the letter of May 22, 1909, which Governor Moore wrote to Secretary Ballinger, in which he says:

Assistant Secretary Pierce proved a disappointment, and I am going home with a message that will give scant comfort to my associates.

I told him as frankly and as squarely as I ever told anybody: "Governor Moore, you can not have your patents upon that record."

Mr. MADISON. And with due emphasis?

Mr. PIERCE. Yes, sir; due emphasis. And I will tell you, Mr. Madison, that Governor Moore was very much chagrined and put out

and angered, and talked a good deal then right in front of Mr. Finney and me and rehearsed the troubles that he had had, and he finally calmed down a little and he said substantially this:

The Government has had our money, over \$50,000, for two or three years. Nothing is being done looking toward the issuing of these patents—

Mr. VERTREES. Mr. Pierce, would you just let me say there for the purpose of making the record clear, the letter to which Mr. Pierce refers is found at pages 238 and 748 of the record. Now, proceed, Mr. Pierce.

Mr. PIERCE. I would like to have the last part of my statement read, please.

(The reporter read the concluding portion of Mr. Pierce's statement, as follows:)

The Government has had our money, over \$50,000, for two or three years. Nothing is being done looking toward the issuing of these patents.

Mr. PIERCE. I having told him that he could not have his patents from that record, then he said, "What shall we do"—asked what could be done; and I told him that I would direct the General Land Office to have charges filed against the patents and that he should have a speedy trial of the issues. I told him that.

Now, at that time the affidavit and record against the Cunningham cases, these charges against the Cunningham record were in a large number of affidavits, the Cunningham book, and a great mass of stuff, but there was no specific charge formulated to which anybody could plead, and I then told him that I would direct the General Land Office to frame up charges and serve them upon him, and that if after the service of these charges upon him he decided—wanted a hearing—he could have a hearing; that if he decided he did not want a hearing the entries would be canceled as a matter of course. I told him then also that it was the policy of the Secretary of the Interior, and that he had so directed, to speedily bring all suspended cases in the United States and Alaska, wherever they were, up to date, under the appropriation made March 4, 1909.

Now, I would like very much in support of the statements that I have made to call attention to the second letter which Governor Moore wrote to the Secretary, which is found on page 179 of Senate Document 248, and on page 239 of the record in this case, written by Governor Moore from the Congress Hotel and Auditorium Annex, Chicago, May 29, 1909, in which he says:

Assistant Secretary Pierce does not understand the case very well, and has been influenced by Glavis, who, having done some disreputable things and become involved in a controversy with Cunningham, is prejudiced and wants vindication.

That is substantially, so far as I now recall it, all of the conversation that Governor Moore had with me at that time, and he went away very much disappointed.

Mr. VERTREES. Now, Mr. Pierce, I am going to interrupt the narrative just there to ask one general question, and then I will come back to it. You have stated that the Secretary, under the circumstances detailed, turned over the control and direction and management of these Cunningham cases to you. I want you to state now to this committee if Secretary Ballinger from that time to this has ever in any way, directly or indirectly, interfered with your control, your

direction, or attempted in any way to influence your judgment or action.

Mr. PIERCE. He never has. We had no conversation whatever about the Cunningham cases at any time, until after this investigation started, or I presume until we filed our answers with the President. We then talked it over somewhat as to what had been done, but never once has he made a suggestion to me of what action should be taken by me in the Cunningham cases.

Mr. VERTREES. Or, to your knowledge or apprehension, attempted in anywise to influence your judgment or action?

Mr. PIERCE. No, sir; Mr. Vertrees, I am constitutionally built to be a pretty positive man, and when things are turned over to me, I do not—

The CHAIRMAN. It is evident, Mr. Vertrees, we can not finish with this witness to-night. We will have to adjourn until next Friday at 10 o'clock.

The record will show the following changes in the testimony:

Changes to be made in record of testimony of George A. Parks:

Page 2603 of the record, line 10 from the bottom, the word "where" should be substituted for the word "who."

Page 2604 of the record, line 22, the word "as" should be substituted for the word "and" at beginning of line.

Page 2606 of the record, line 14 from the bottom, the word "telephone" should be substituted for the word "telegram."

Page 2607 of the record, line 27, the word "same" should be substituted for the word "first."

Page 2607, line 32, the word "it" should be substituted for the word "he."

Page 2607, line 7 from the bottom, the words "off the end" should be substituted for the words "and fell into."

Page 2607, line 2 from the bottom, the word "box" should be substituted for the word "room."

Page 2613, line 3, the word "first" should be substituted for number "10."

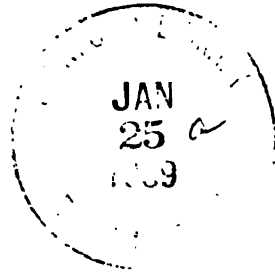
Page 2616, line 8 from the bottom, the word "he" should be substituted for the first "I."

Changes to be made in testimony of Ella M. Shartell:

Page 2592 of the record, line 12, the words "notebooks of Special Agent Bowman which had been sent for by the committee" should be substituted for "notebooks which had been sent by Special Agent Bowman."

The CHAIRMAN. The committee will now stand adjourned until Friday, April 15, 1910, at 10 o'clock a. m.

(Thereupon at 5.25 p. m., the committee adjourned until Friday, April 15, 1910, at 10 o'clock a. m.)



NO. 29

**HEARINGS BEFORE THE COMMITTEE TO INVESTIGATE THE
INTERIOR DEPARTMENT AND FORESTRY SERVICE**

APRIL 15, 1910

**ROOM 207, SENATE OFFICE BUILDING
WASHINGTON, D. C.**

MEMBERS OF THE JOINT COMMITTEE

KNUTE NELSON, Minnesota, Chairman.

SAMUEL W. McCALL, Massachusetts, Vice-Chairman.

FRANK P. FLINT, California.

GEORGE SUTHERLAND, Utah.

ELIHU ROOT, New York.

WILLIAM E. PURCELL, North Dakota.

DUNCAN U. FLETCHER, Florida.

MARLIN E. OLMSTED, Pennsylvania.

EDWIN DENBY, Michigan.

E. H. MADISON, Kansas.

OLLIE M. JAMES, Kentucky.

JAMES M. GRAHAM, Illinois.

PAUL SLEMAN, Secretary.

FRIDAY, APRIL 15, 1910.

JOINT COMMITTEE TO INVESTIGATE THE
INTERIOR DEPARTMENT AND FORESTRY SERVICE,
Washington, D. C., April 15, 1910.

The Joint Committee to Investigate the Interior Department and Forestry Service met pursuant to adjournment at 10 a. m.

Those were present as counsel: Mr. Louis D. Brandeis, representing Louis R. Glavis; Mr. George Wharton Pepper and Mr. Nathan A. Roth, representing Mr. Gifford Pinchot; Mr. John J. Vertrees and Charles Rasch, representing Secretary Ballinger.

The CHAIRMAN. The committee will please come to order. I have Assistant Secretary Pierce was on the stand when we adjourned.

Mr. VERTREES. Yes, sir.

Mr. BRANDEIS. Mr. Chairman, before we proceed with the examination, I desire to call the attention of the committee to a matter in connection with the production of documents, which is of some importance. In the first call for the production of documents which the committee will find on page 319, the call was dated January 27, 1910, it was presented to the committee on January 28, and transmitted to the chairman to the Secretary of the Interior on January 29, you will find in paragraph 24, on page 320, a request for a letter from Mr. Todd, United States attorney at Seattle, Wash., about May 18, 1910, relating to the proposed criminal prosecution of certain Alaska coal claimants, "which letter should now be on file either in the General Land Office or in the Seattle land office, and all other papers in either of said files bearing upon the same matter." I call attention particularly to the last paragraph, "all other papers in either of said files bearing upon the same matter."

That evidence called for, as the committee will remember, is of importance to an issue which is of very great importance in the case; it bears upon that charge which the Attorney-General made in his summary, and more specifically in his conclusion, that Mr. Glavis was guilty of habitual procrastination, and he presented as an illustrative proof of that fact Mr. Glavis's dealings with the criminal prosecution of the Alaska coal claimants. It is the same matter of which recently I examined Mr. Todd at considerable length with reference to the statement of the Attorney-General that no steps whatsoever had been taken in the matter. I first called attention to that issue at the hearing on January 28, when I pointed out the passage in the Attorney-General's summary, not his conclusion, but in the summary of the evidence to Mr. Glavis where the Attorney-General refers to the telegrams of April 11 and 13 and the subsequent sending of the papers, the original papers, from Juneau, stating that no action had been taken. And Mr. Glavis in answer to my question said that that statement was absolutely false. Now, in pursuance of that call, there was furnished, under date of February 14, 1910, by the department, and it appears on page 639 of the record:

Department of the Interior, General Land Office, Washington, D. C., February 14, 1910.—Schedule of papers called for by Senate joint committee in lists dated January 29, 1910, and February 1, 1910.

Those are the dates of transmittal by the committee and not the date of the call. You will find paragraph 22, which is the same as paragraph 24 in my letter, the letter from United States Attorney

MEMBERS OF THE JOINT COMMITTEE.

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There were present as counsel: Mr. Louis D. Brandeis, representing Mr. Louis R. Glavis; Mr. George Wharton Pepper and Mr. Nathan A. Smyth, representing Mr. Gifford Pinchot; Mr. John J. Vertrees and Earl Rasch, representing Secretary Ballinger.

The CHAIRMAN. The committee will please come to order. I believe Assistant Secretary Pierce was on the stand when we adjourned.

Mr. VERTREES. Yes, sir.

Mr. BRANDEIS. Mr. Chairman, before we proceed with the examination, I desire to call the attention of the committee to a matter in connection with the production of documents, which is of some seriousness. In the first call for the production of documents which the committee will find on page 319; the call was dated January 27, and was presented to the committee on January 28, and transmitted by the chairman to the Secretary of the Interior on January 29, you will find in paragraph 24, on page 320, a request for a letter from Mr. Todd, United States attorney at Seattle, Wash., about May, 1908, relating to the proposed criminal prosecution of certain Alaska coal claimants, "which letter should now be on file either in the General Land Office or in the Seattle land office, and all other papers in either of said files bearing upon the same matter." I call attention particularly to the last paragraph, "all other papers in either of said files bearing upon the same matter."

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Elmer E. Todd to Louis R. Glavis, May 18, 1908. That is this letter of May the 18th.

Mr. McCALL. Paragraph 22 seems to be letter of A. H. Wheatley—

Mr. DENBY. No; it is above that, at the top of the page.

Mr. BRANDEIS. It is above that in an earlier call, what is there called the call of January 29, the committee's call of January 29 and my call of January 27. In that letter the committee, owing to the fact, I presume, that the Wilson Coal Company records were specifically called for, this paragraph appears as paragraph 22 instead of paragraph 24, which was in my call; that is furnished, but no other papers. That letter was afterwards put in evidence by me on February 19 and appears on page 836 of the testimony. I supposed that that was the only documentary evidence in existence, and the subsequent report which appears on 889 of the record of February 19, the date I introduced that; you will find at the bottom of the page the second letter referred to.

Referring to the request of the joint committee of Congress calling for documents, correspondence, etc., I have the honor to report as to the papers that have not yet been transmitted to you.

There had in the meantime been a number of transmittals of papers.

Then follows the list there, with nothing referring to paragraph 22. I had supposed, relying upon that and other assurances, that all the papers had been transmitted, that there was no other documentary evidence until, in the latter part of March, in looking through the files that the forestry had sent here, I found copies, what purported to be carbon copies, of two letters. First, I found a letter, apparently from Mr. Glavis, not bearing any signature, to the commissioner, of June 10, which related to proceedings against the Doughton group, and on March 29 I found a letter, a carbon, an unsigned carbon of a letter, apparently of Mr. Glavis's, dated June 8, which referred to proceedings in the Christopher and Simmons group. Both of those letters have been put in evidence. The first one that I found—when I found the first—immediately after I found it, it was put in evidence on page 2077 of the record—that is the June 10 letter—and the other letter was introduced in connection with the testimony of Mr. Todd. You will recall that a fortnight ago or more I made a general request for all correspondence with Mr. Christensen in regard to furnishing documents and the production of evidence. It was that call to which Secretary Ballinger specifically protested, and in respect to which, overruling his protest, the committee entered the order of a week ago to-day. After that call Mr. Christensen went upon the stand, and in pursuance of that request put in evidence, specifically in answer, as I remember, to some request that he should introduce all other correspondence, that it then went in chronological order at the suggestion of the chairman I found this letter on page 2814 from Christensen, or, rather, presumably from Christensen to H. H. Schwartz.

SIR: I am in receipt of your above letter of February 1, 1910, in which you advise that the joint committee desires the following:

"Letter from Mr. Todd, U. S. attorney at Seattle, Washington, about May, 1908, relating to the proposed criminal prosecution of certain Alaskan coal claims, where letter should now be on file either in the General Land Office or in the Seattle land office, and all other papers"——

The CHAIRMAN. What page are you reading from?

Senator FLETCHER. The middle of page 2814.

Mr. BRANDEIS. 2814.

"and all other papers in either of said files bearing upon the same matter."

The CHAIRMAN. Is that the letter starting in the middle of the page?

Mr. BRANDEIS. The letter in the middle of the page; yes, sir [continuing reading]:

In accordance therewith, I transmit herewith original report of Special Agent Horace T. Jones, dated April 22, 1908, to E. E. Todd, United States attorney; original letter from Glavis to Jones, dated April 24, 1908; original of letter from Todd to Jones, of May 13, 1908; also copy of letter from Todd to Glavis, dated May 18, 1908, and of which you have already been furnished with the original, and copy with my letters to you of February 4 and 5, 1910, and copy of original letter from Jones to Todd, dated May 14, 1908. There is also attached herewith an original letter, dated June 8, 1908, addressed to the Commissioner of the General Land Office, evidently from Chief of Field Division Glavis, but unsigned, and a copy of said letter. I am informed by Special Agent Jones that this letter was never sent to the commissioner by Mr. Glavis, as he spoke of taking the matter up personally with the commissioner when he was in Washington. I am unable to find a carbon copy of this report, except the one attached thereto, which is a copy which was apparently written some time later. I am informed by Miss Shartell, the stenographer now in this office, that this copy was made by Mrs. Greer, who was in this office until some time in August, 1909. You will note that the copies bear the initials "GG." United States Attorney Todd informs me that all of the papers in connection with the proposed criminal prosecution were returned to Mr. Glavis with his letter of May 18, 1909, including carbon copy of his letter of May 13, 1909.

These are all of the papers in the Christopher group relating to the proposed criminal prosecution.

Very respectfully,

Chief of Field Division.

The CHAIRMAN. Now, in order to save time, Mr. Brandeis, why not write a letter specifying those documents that you want—

Mr. BRANDEIS. I do not think that it does save time, and I do not think that that disposes of this question.

The CHAIRMAN. And I will have them sent for. There is no use of making any argument.

Mr. BRANDEIS. I do not propose to make any argument.

The CHAIRMAN. If you want those documents sent for, just specify them and I will write a letter to the department.

Mr. BRANDEIS. I have already called for them, Mr. Chairman, and I want to call the attention of this committee to the fact—

The CHAIRMAN. I want to say to you that every call you have made I have forwarded to the department promptly.

Mr. BRANDEIS. I said, Mr. Chairman, at the outset—I gave the date that this call was presented to the committee, and the fact that you immediately transmitted that call on the following day, namely, the 29th.

Senator SUTHERLAND. What are the particular letters and papers that are missing, Mr. Brandeis?

Mr. BRANDEIS. Every letter in there except the letter of May 18, so far as the call is concerned.

Senator SUTHERLAND. This letter from Mr. Glavis, the unsigned letter, was produced here, was it not?

The CHAIRMAN. That is in evidence already.

Mr. BRANDEIS. The unsigned letter was not produced. I found a carbon copy of that unsigned letter in rummaging among the papers.

Senator SUTHERLAND. The letter, as I remember, is one that Mr. Glavis wrote but did not transmit, and that was produced and is in the record.

Mr. BRANDEIS. There is in the record a carbon copy, or what purports to be a carbon copy, and I assume is a carbon copy, but I do not know it. This is the very matter, of course, about which there was an unpleasant difference between the chairman and myself.

As a matter of fact, when I found on the 29th of March, which was two days before Mr. Todd testified—when I found that carbon copy in the forestry papers, and had found a few days before the letter of June 10 in relation to the Doughton group, also a carbon copy in the forestry, I had supposed—for which there was apparently no warrant—I had supposed that Mr. Glavis was in error, that the letter had not been sent. I thought he was probably right in saying he had discussed the matter with Mr. Dennett, but was in error in supposing that it had not been sent. I had no idea, at that time, that there was this voluminous correspondence, these many documents that are here referred to relating to this matter.

Now, it seems to me that we are in an extraordinary position here. We have got to rely upon the Department of the Interior to furnish documents in pursuance to a call. Now, here was an instance where we called for one specific document, which we happened, or which our witness happened, to remember, but put in the request for all other documents bearing upon the same subject, we not being able to call for the others—in fact, several of the others were communications which were not between Mr. Glavis at all, most of them, as I remember it, but between Mr. Jones, who was not here, but who was at that time in the trial of the Binger Hermann case with Mr. Haeney. Now here is that situation: There arrives apparently, because I assume the letters referred to there did arrive—I have no knowledge of it, and it is an inference from the fact that the letter is here—there arrived all of this correspondence, and we are furnished only with the one letter which we happened to be able to specify directly. This is not a subject that could have been overlooked, because it is a subject upon which there has been considerable discussion since that time. When I put in on February 19 that letter of May 18, this subject as to whether that letter was sent to Washington or not was a matter of discussion. In connection with Mr. Todd's testimony the subject became one of an unfortunately heated discussion, but the fact that that correspondence exists is a fact which would not have been discovered at all by us but for the fact that I insisted upon having go into the record all of the correspondence between Mr. Christensen and the office in regard to the collection of evidence or documents in these cases. And it came in only after protest.

Senator SUTHERLAND. Which of those letters in connection with the letter from Christensen have been produced?

Mr. BRANDEIS. So far as this office is concerned, I understand that none of them have been produced.

Mr. GRAHAM. By this office I suppose you mean the Interior Department?

Mr. BRANDEIS. I mean the General Land Office, the Secretary of the Interior. The May 18th letter was produced, as I have stated, and put in evidence by me on February 19.

Senator SUTHERLAND. None of those letters have been produced in response to the call except that one?

Mr. BRANDEIS. In response to the call none of them, but certain of them, I am not able to state at the moment, copies were put in by Mr. Todd in connection with Mr. Todd's examination.

Senator SUTHERLAND. You want those letters as I understand it?

Mr. BRANDEIS. I want those letters.

Senator SUTHERLAND. Mr. Chairman, I move that the chairman direct a letter to the Secretary calling for those letters specifically.

Mr. BRANDEIS. Now I desire also to call another matter to the attention of the committee—

The CHAIRMAN. Let me put this motion.

Mr. GRAHAM. Let me suggest an amendment to it—that not only those letters specifically called for, but all other letters included within the general call relating to that subject-matter, be also included, because there may be—

The CHAIRMAN. I would suggest to the gentlemen in this connection that it would make the record better for us if Mr. Brandeis would just draw up a letter addressed to me specifying all that he wants here specifically, and then I would immediately forward it to the Secretary, and then we have got a complete record of it.

Senator FLETCHER. Has he not already done that?

The CHAIRMAN. I think that is better than a motion, unless you have the letters specified in the motion. You draw up that letter and your request as broad as you want it, specifying these letters and others, and I will forward it promptly.

Mr. VERTREES. Mr. Chairman, I wish in this connection to say that of course everything called for will be furnished, and has been furnished that has been called for, so far as known. And if the department or the officers of the department had been notified privately that there was any particular paper that had been overlooked, I am sure that there would have been a search made for it, and, if found, it would have been presented. I merely arise to say that I resent the imputation that there has been any inclination not to furnish anything. That is not true; there is not a word of truth in it. There are half a dozen different departments and bureaus, and this letter he speaks of appears to be in Mr. Schwartz's division, and inquiry there may find it or may not; I do not know how that is, but it certainly shall be done.

Mr. BRANDEIS. I want to say just one word, because there has apparently been a misapprehension, and I want to make myself absolutely clear.

The CHAIRMAN. Why could you not, Mr. Brandeis, in order to save time and without arguing any further, just specify in your letter to me what you want, and I will forward it, and we will do our best to get what you want. I am anxious to proceed with the case. What is the use of taking up time in arguing this matter? What you ask for we will try to get for you—

Mr. BRANDEIS. I am not satisfied to get the papers that I am able, from such information as is within my power, to specify. Here are papers which came to the office, came to Mr. Schwartz in pursuance to the committee's request—

Mr. DENBY. The chairman has said for you to make your call as broad as you desire.

Mr. BRANDEIS. I could not make it any broader than I did.

Mr. DENBY. It will be repeated, then. You may repeat it and the department directed to send the papers.

Mr. BRANDEIS. I repeat the call of January 27.

Mr. DENBY. And the committee will instruct the department to send all the papers called for in the call of January 27

Mr. BRANDEIS. Very well, if that is done.

The CHAIRMAN. That will be taken as the sense of the committee. Bring on the witness. I understand that Assistant Secretary Pierce was on the stand when we closed.

Mr. VERTREES. Before Mr. Pierce takes the stand I would like to have the committee to permit Mr. Brooks to appear. There is a correction in his testimony which he has signified his desire to make, and I think he directed a letter to the chairman on that point.

The CHAIRMAN. Please state that again a little louder.

Mr. VERTREES. I say, before Mr. Pierce takes the stand I would like Mr. Brooks to take the stand to make some correction in his testimony which he has signified a desire to make, and I think he wrote a letter to the chairman on that point.

The CHAIRMAN. He wrote me a letter and said that he desired to make a correction and I told him to be here to-day.

Mr. VERTREES. It will only take a moment. He is present and I would like now for him to do that.

The CHAIRMAN. Have him called to the stand. Very well, Mr. Brooks.

STATEMENT OF MR. BROOKS.

Mr. BROOKS. I am very sorry indeed to take up any more time of the committee. The first matter is, I was asked to furnish a list of publications relating to coal in Alaska which had been made by members of the United States Geological Survey on coal in Alaska. I prepared such a list and I presume it is to be included in the record. At least here is the list.

Mr. VERTREES. We ask that it go into the record, Mr. Chairman.

The CHAIRMAN. Yes, it will go into the record.

(The list is as follows:)

LIST OF PUBLICATIONS BY MEMBERS OF THE U. S. GEOLOGICAL SURVEY ON COAL IN ALASKA (INCLUDING BRIEF REFERENCES), 1883-1910.

- Ashburner, Charles A. Coal: Mineral Resources of the United States for 1885: U. S. Geol. Survey, 1886, p. 14.
- Coal: Mineral Resources of the United States for 1888: U. S. Geol. Survey, 1890, pp. 214-216.
- Atwood, W. W. Mineral Resources of Southwestern Alaska: Bull. U. S. Geol. Survey No. 379, 1909, pp. 108-152.
- Barnard, E. C. Report of the Fortymile expedition: Maps and descriptions of routes of exploration in Alaska in 1898, a special publication of the U. S. Geol. Survey, 1899, p. 81.
- Brooks, A. H. The Yukon District: Maps and descriptions of routes of exploration in Alaska in 1898, U. S. Geol. Survey, 1899, p. 95.
- A Reconnaissance from Pyramid Harbor to Eagle City, Alaska: Twenty-first Ann. Rept. U. S. Geol. Survey, 1899-1900, pp. 382-383.
- The coal resources of Alaska: Twenty-second Ann. Rept. U. S. Geol. Survey, pt. 3, 1902, pp. 515-571.
- The Mining Industry in Alaska: Eng. Min. Jour., vol. 77, 1904, pp. 75-78.
- Reprint in Mineral Industry, 1903, New York, 1904, pp. 420-428.
- The Production of Coal in 1904: Mineral Resources of the United States for 1904, pp. 112-114 (of separate), 452-454 (of complete volume).
- The Investigation of Alaska's Mineral Wealth: Trans. Am. Inst. Min. Eng. Lake Superior Meeting, Sept., 1904, pp. 1-20.
- Reprint in Am. Geog. Soc. Bull., vol. 37, 1905, pp. 26-40.
- Reprint in Appendix to Report of Governor of District of Alaska, 1904. Washington, D. C., pp. 95-105.
- Alaska: The Eng. Min. Jour., vol. 79, 1905, pp. 16-17.

- Brooks, A. H. The Outlook for Coal Mining in Alaska: Trans. Am. Inst. Min. Eng., Washington Meeting, May, 1905, pp. 1-17.
- The Outlook for Coal Mining in Alaska: Trans. Am. Inst. Min. Eng., bi-monthly bulletin No. 4, 1905, pp. 683-702.
- The Mineral Resources of Alaska: Proc. Am. Min. Congress, Eighth Ann. Session, El Paso, Nov., 1905, pp. 194-214.
- The Mining Industry in 1905: Bull. U. S. Geol. Survey No. 284, 1906, p. 9.
- The Geography and Geology of Alaska: Prof. Paper U. S. Geol. Survey No. 45, 1906, 327 pp.
- Hearing before the Committee on Public Lands, H. R., January 11, 1907.
- The Geologic Survey of Alaska: Pop. Sci. Monthly, vol. 69, Jan., 1906, pp. 42-54.
- Alaska and its Mineral Resources: Proc. Am. Min. Congress, Eleventh Ann. Session, Pittsburgh, Dec., 1908, pp. 258-268.
- The Mining Industry in 1907: Bull. U. S. Geol. Survey No. 345, 1908, pp. 30-53.
- The Mining Industry, 1908: Bull. U. S. Geol. Survey No. 379, 1909, pp. 21-62.
- The Mineral Resources of Alaska: Bull. U. S. Geol. Survey No. 394, 1909, pp. 72-78.
- Coal: Mineral Resources of the U. S. for 1908: U. S. Geol. Survey, 1909, pp. 94-96.
- The Alaska of To-Day: The American Review of Reviews, July, 1909, vol. 40, pp. 49-62.
- Collier, A. J. The Coal Resources of the Yukon, Alaska: Bull. U. S. Geol. Survey No. 218, 1903, 71 pp.
- Coal Resources of the Yukon Basin, Alaska: Bull. U. S. Geol. Survey No. 213, 1903, pp. 276-283.
- The Coal Fields of Cape Lisburne, Alaska: Am. Geologist, vol. 34, 1904, pp. 401-402.
- Coal fields of the Cape Lisburne region: Bull. U. S. Geol. Survey No. 259, 1905, pp. 172-185.
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Mr. BROOKS. There are two corrections I desire to make in my testimony. The first is a minor one. It appears on page 2882. In answer to a question about coal in Mexico, I am credited with the statement that there was no coal in Mexico. Of course, that is an error. What I intended to say was there is no coal in Mexico which in my opinion would come into competition with the Alaska coal.

I was asked at the last meeting to give a definite reference to certain reports published in England on the coal resources, and I have them here. One is the report of the commission appointed to inquire into several matters relating to coal in the United Kingdom, Volume I, London, 1871. A second one, Official Report of the Royal Commission on Coal Supplies, London, 1905.

The CHAIRMAN. Those will all go into the record.

Mr. BROOKS. These are just simply the titles I want to submit, not the abstracts.

The particular correction which I wish to make is in regard to my testimony in reference to the exhaustion of the coal resources of England. I am very sorry indeed to state that the figures I used were in error.

Mr. GRAHAM. I thought you would go back on that point.

Mr. BROOKS. I spoke with entire confidence, as I had my notes before me at the time. I had not figured this percentage myself, but had left it to an assistant who had understood that what I desired was the percentage of exhaustion of the world's supply of coal represented by the amount mined in the British Islands. These were the figures that I used. Therefore, four-tenths of 1 per cent is not the percentage of exhaustion of the coal of the United Kingdom, but the approximate percentage of exhaustion of the world's supply of coal represented by the coal mined in England. England, as a matter of fact, has used up between 6 and 7 per cent of her total coal supply.

I regret very much that I should have misled the committee in this matter, especially as it appeared from some of the questions that it was regarded as vital to the matters under consideration.

I will add that I have been engaged for some time in investigating the problems connected with the marketing of Alaska coal. Necessarily all foreign coal fields whose product might come into competition with Alaska coal had to be considered. This led me to collect considerable data on the coal fields of the world, but all this matter has not yet been digested. Not knowing what questions I might be asked, I brought all my notes with me, and among others a table showing coal resources of the world. This table, which I had not had time to verify and hardly expected to use in my testimony, contained the statement of percentage which I have explained above.

My statement on the percentage of exhaustion of our own coal field, namely, less than four-tenths of 1 per cent, was from the official reports of the survey, and is correct so far as information is available.

One more statement in regard to the coal supply of England. I have read the report more carefully than on the evening I testified [reading]:

The total original tonnage of the United Kingdom, as estimated in the report of the royal commission on coal supplies, published in 1905, was, in round numbers, 150,000,000,000 tons. The total consumption is about 10,000,000,000.

The first record of coal mining relates to the year 1180. In 1660 the production was a little over 2,000,000 tons; in 1800, about 10,000,000; in 1908, about 292,000,000 tons.

It is stated on page 24 (par. 133) of the report of the royal commission on coal supplies that "in view of the extent of the estimated coal resources of the country, and if our anticipations expressed in paragraph 46 are correct, viz, that the present rate of output will soon be checked by natural causes, there seems no present necessity to restrict artificially the export of coal in order to conserve it for home supply."

Mr. GRAHAM. What is the minimum thickness of vein included in the report of British coal, Mr. Brooks, in that estimate?

Mr. BROOKS. That is 12 inches.

The CHAIRMAN. Is that all, Mr. Brooks?

Mr. BROOKS. That is all.

The CHAIRMAN. Hand the papers to the stenographer.

Mr. VERTREES. We ask that they be made part of the record.

The CHAIRMAN. They will be made part of the record.

Mr. VERTREES. Now, Mr. Pierce, will you take the stand?

STATEMENT OF MR. FRANK PIERCE, ASSISTANT SECRETARY OF THE INTERIOR—Resumed.

Mr. VERTREES. Mr. Pierce, when we adjourned at the last session, you were at that time relating a conversation between you and Governor Moore, the representative of the Cunningham claimants, with respect to the hearing and the preparation of charges.

Mr. PIERCE. Yes, sir.

Mr. VERTREES. I wish you would resume the story just at that point and relate to the committee what followed.

Mr. PIERCE. The last part of my testimony was the introduction of an extract from the letter which Governor Moore wrote the Secretary of the Interior, on the 29th of May, 1909, in which, speaking of me, he said:

Assistant Secretary Pierce does not understand the case very well, and has been influenced by Glavis, who, having done some disreputable things and become involved in a controversy with Cunningham, is prejudiced and wants vindication.

Now I have given substantially all the conversation that I had with Governor Moore at the first interview after Mr. Glavis and Mr. Finney and myself had gone over the charges against the Cunningham cases.

Governor Moore was very much put out, chagrined, and disappointed because I told him that upon that record as it stood he could not have his patents, and he went away disappointed, saying also as recall, that he had not done any wrong himself and did not know whether any of the others had, and that he thought he ought to have his patents. I reaffirmed my statement to him that it was absolutely impossible for him to have his patents upon the record as it now stood, so that I would direct a speedy hearing of the charges which Mr. Glavis and others had made against the Cunningham cases. After he went away I told Mr. Finney to go over to the General Land Office and tell the Commissioner of the Land Office, or Mr. Schwartz, who had the matter in charge, that I had promised Governor Moore a speedy hearing. Mr. Finney came back and told me that he had delivered my message. That is the substance of all the conversation I had with Governor Moore at that interview so far as I now recall it. A day or two later Governor Moore came into the office with Mr. Finney and stated that Mr. Finney had called his attention to my opinion, that it is called, of May 19, 1909, on the act of May 28, 1908. Governor Moore said he wanted to talk it over with me. He said to start with, that he was familiar with that act of May 28, 1908, that it was unsatisfactory to him and was unsatisfactory generally to Alaska coal claimants because it denounced a forfeiture of title to the claim if they did any of the acts which were prescribed in the act—did any of the illegal acts—referred to in that act of May 28, 1908.

The CHAIRMAN. In section 3 of that act?

Mr. PIERCE. In section 3 of that act. To speak generally, that was easy to make charges against claims and that it took such a long time—easy to make charges even after they got their patents—so that it took such a long time to disprove them, and that he did not care very much for that act. He then asked me what steps were necessary to be taken if he and his coassociates in the Cunningham claims were to take advantage of that act of May 28, 1908.

I turned to Mr. Finney—I had not myself looked into the procedure particularly; I was familiar with the law, but not with the procedure—I asked Mr. Finney what steps Governor Moore and his coassociates would be obliged to take if they wanted to take advantage of that act of May 28, 1908. Mr. Finney stated that they would have to go back to the land office and amend their applications for a patent. Governor Moore then said that so far as he was concerned he would stand upon his rights under the act of 1904, or else he would not have a patent at all, and that he thought his coassociates would, but that he did not know as far as they were concerned; he was considerably disappointed and chagrined at the result of the general conversation, and stated that at any rate we ought to give him a speedy hearing. I told him that I had so directed that he could have a speedy hearing.

And lest I might forget it here as I am on this conversation, I want to say—I want to make two points: First, the only thing that I was trying to get from Mr. Glavis and the General Land Office was a formulation of charges against the Cunningham cases in a definite form so that Governor Moore and his coassociates could plead to it and so that proper issues could be made up for the trial of the cases. That is the first point that I had in mind. The second point that I want to impress upon the committee is this, that according to the information which we had about the Cunningham cases and which was discussed with Mr. Finney and Mr. Glavis and myself, according to that information, it was absolutely immaterial whether he (Governor Moore) proceeded under the act of May 28, 1908, or under the act of 1904, because with these charges standing there a hearing had to be had under any circumstances, whether they proceeded under one act or under the other act.

The substance of Mr. Glavis's charges, as contained in the papers, was that there was an agreement made between the locators prior to location by which these various locators agreed to give Mr. Cunningham an interest in their claims. In other words, the locators had "grub-staked" Cunningham to locate it, and these particular "grub-stake" contracts are void when it comes to coal claims, and whether they be under the act of 1904 or under the act of May 28, 1908, there had to be an investigation made.

It has been stated in the testimony somewhere that I told Governor Moore that he could have his patent under the act of May 28, 1908, and in substantiation of what I have stated that I did not tell him that I want to call the committee's attention to a paragraph or two out of Governor Moore's testimony given before the commissioner, Mr. McGee, who was appointed to take the testimony in the Cunningham cases.

Governor Moore's testimony, on pages 248 and 249 of the record of the Cunningham hearings—this is what Governor Moore said, reading:

Q. Governor Moore, after Mr. Ballinger retired from the Land Department, at a time subsequent to that did you call on and interview the then Commissioner of the General Land Office, or any other officer of the Interior Department?—A. Yes, sir.

Q. What other officer?—A. Mr. Dennett, the Commissioner of the General Land Office.

Q. Anyone else?—A. Assistant Secretary Pierce.

Q. Did you call on them in the same manner that you called on Mr. Ballinger before?—A. Yes; that was in May of this year.

Q. That was in May, 1909?—A. Yes.

Q. What purpose did you call upon these gentlemen for?—A. I wanted to see what the prospects of getting my patent was.

Q. What information did you get?—A. Mr. Dennett said there had been some charges filed, as I remember it. He said we could have patents under the new law, or we could have a rehearing.

Q. Was he referring to yours?—A. And the other entrymen represented by Mr. Cunningham.

Q. He stated that you could have a patent under the acts of 1908?—A. Yes.

Q. Or have a rehearing, or a hearing to determine whether you could have a patent under the act of 1904?—A. I think it was the Assistant Secretary that said we could have a rehearing, but Mr. Dennett said we could have patents under the new law.

Q. What new law do you refer to?—A. The new law of 1908.

Q. What did you decide to do as far as you were concerned?—A. I decided to have a rehearing. I think I may say—Mr. Dennett—I said to Mr. Dennett if there has been fraud in these entries why should we have patents under any law, and he said there was no fraud or moral turpitude charged.

Now, of course, I can not speak as to what conversation Governor Moore had with Mr. Dennett, but so far as the conversation he had with me it all related to a hearing upon the Cunningham claims.

Mr. VERTREES. Just there, I will ask you if in that conversation you indicated to Governor Moore about what time it would require to have this hearing?

Mr. PIERCE. Before they could start in with the hearing?

Mr. VERTREES. Yes.

Mr. PIERCE. I told him that I supposed we could be ready in sixty or ninety days. That is the best of my recollection.

Mr. VERTREES. Did you ever see Governor Moore any more with reference to those matters?

Mr. PIERCE. No, sir; that is the only time I ever saw him about them. In fact, the only time that I have seen him since that date, except I met him the other day in a café here.

Mr. VERTREES. Did any representatives of the Cunningham claimants subsequently come to see you?

Mr. OLMSTED. Just excuse me, please, Mr. Vertrees, before he answers that, until I get clear in my mind. Did you or did you not say to Governor Moore that he could have the patent under the act of 1908 without the hearings?

Mr. PIERCE. No, sir; I said to him that he could not have the patent under any act whatever without a hearing.

Mr. VERTREES. My question was whether any other representatives of the Cunningham group ever saw you after that. Without stating what parties, just state who they were.

Mr. PIERCE. The only other one of the Cunningham claimants who saw me was Mr. Clarence Cunningham himself.

Mr. VERTREES. And any attorney for them?

Mr. PIERCE. Yes; Mr. John P. Gray, of Wallace, Idaho, was with him.

Mr. VERTREES. They came together?

Mr. PIERCE. Yes, sir.

Mr. VERTREES. Were those the only representatives of the Cunningham group that ever saw you with reference to the matter?

Mr. PIERCE. Later Mr. Gray came in once or twice.

Mr. VERTREES. I mean persons other than Mr. Gray, Mr. Cunningham, and Governor Moore, as you have stated?

Mr. PIERCE. I was going to say that a little later Mr. Gray came in again with Dr. Horace Von Winchell, an eminent mining expert and

geologist who lives in Minnesota—Indianapolis, I think. They came in, too.

Mr. VERTREES. Those were all?

Mr. PIERCE. Yes, sir; those were the only ones.

Mr. VERTREES. You gave an opinion?

Mr. PIERCE. Yes, sir; may I recite this conversation?

Mr. VERTREES. Before you do that I wish to get at the order of time. Did your conversation with Mr. Gray and Mr. Cunningham take place before or after you gave this opinion?

Mr. PIERCE. After.

Mr. VERTREES. Then I believe I will ask you in this connection to state what happened with reference to the giving of an opinion which it was stated you gave as a subordinate of the Secretary, and with respect to which it is charged that he changed his opinion overnight. If it occurred in the meantime there between these two conversations.

Mr. PIERCE. To get the chronological order, May 19, opinion on the stated case—

Mr. VERTREES. But wait one moment. Will you prefer to continue those conversations?

Mr. PIERCE. I would like to adopt that course because it is chronological in my mind in that way.

Mr. VERTREES. Yes, sir; you may proceed.

Mr. PIERCE. Some time after I had had these conversations with Governor Moore—probably two or three weeks, I can not recall the date—the Secretary sent for me to come over to his desk or his room. I went over and found Mr. Clarence Cunningham, one of the claimants, and Mr. John P. Gray in the Secretary's office. The Secretary then introduced Mr. Cunningham to me. I had never met him. I knew Mr. Gray. He stated to both of these gentlemen that he had turned over the Cunningham cases to me and told them that they should do whatever—he also stated at that time the reason that he had turned it over, that he had been called into consultation about the Cunningham cases after he resigned as Commissioner of the General Land Office and before he became Secretary of the Interior, and stated to them that I should do whatever was necessary to be done in the department with reference to these cases. That was all the conversation in the Secretary's office. I then took Mr. Cunningham and Mr. Gray to my office and we had a very brief conversation.

I do not recall very much about the conversation, but all there was to it, so far as I can now recall, was as to when the hearing upon the Cunningham cases was likely to take place; that is the substance of that interview. I did not say very much at all. I told them it would take place as speedily as we could get ready for it, taking into consideration the department's interest.

Now, later, about the 24th of June, Mr. Gray came himself to the department again and came to see me and talked with me about when the hearing could be had, and made this suggestion to me at the time, and I think he came for the purpose of making this suggestion. It was this: He said, "We have a large number of witnesses"—I do not remember. I have stated it in my report here to the President a hundred—but he said a very large number of witnesses, and they are all in the United States, substantially all in the United States instead of in Alaska, and he asked me if we would stipulate to take the

estimony of these witnesses in the United States instead of taking the witnesses to Alaska to give their testimony. I told Mr. Gray that I would consider that matter and he said he was going over to New York and would be back in two or three days, and that he would talk it over with me again after he returned from New York. I then thought the matter over and talked with Mr. Finney, and probably some others in our department, as to the taking of the testimony in the United States. Mr. Gray had simply suggested the taking of the testimony in the United States—and I concluded that that was a reasonable course. Mr. Gray had stated that it would save a great deal of expense and time. Meanwhile, between the time Mr. Gray left and the time he came back from New York, I was considerably troubled as to just what ought to be done. I had been in the department since November 1, 1907. During the entire winter of 1908, up to May 28, 1908, there had been a large number of Alaska people down here on the coal situation and they missed no opportunity to present their different claims to Secretary Garfield and to the committees in Congress. They had what I would call a strong lobby. I had found out in examining the papers that one of the Alaska coal-claim men was the son of the register of the land office——

The CHAIRMAN. At Juneau?

Mr. PIERCE. At Juneau. And thinking these things over, without talking of them to anybody, this is the conclusion that I came to: I will not do to have the register and receiver at Alaska to pass upon these cases in the first instance. First, the son of one of them is a claimant; second, we have had in our department here one of the strongest kind of lobbies for a long time in 1908, and the same kind of effort will be brought to bear upon that register and receiver that they undertook to bring to bear upon Secretary Garfield and Congress, and that that influence will warp their honest judgment, and in my opinion it is best to cut the register and receiver out entirely.

Nobody made that suggestion to me at all. I thought it out myself. Now, Gray returned from New York. He telephoned to me a long distance from New York, and he returned on the 27th of June. Mr. Horace von Winchell was with him. I think that was the time I had this conversation—at any rate one of the conversations—I told Mr. Gray that I had thought over his request to stipulate to take the evidence in the United States of his witnesses and that we had agreed to accede to that, because it would save time and expense, and I said to him also, "Mr. Gray while we are stipulating that, what is the objection to stipulating that the record, when made up, may be sent directly to the General Land Office and leave out the register and receiver at Juneau?"

He readily acceded to that. I did not tell him the particular reason that I had in my mind for cutting him out. The reasons that prompted me were not the saving of time or expense, but it was to get out what seemed to me an uncertain quantity in the register and receiver in Alaska. In cutting that officer out, I had gone over with Mr. Finney, I think, and possibly with others of the attorneys in the department, the question as to whether we could legally do it—legally omit the register and receiver. Now, I found no legal difficulty in the way there because original jurisdiction exists in the register and receiver to try all issues made up prior to the issuance of the final receipt. That is the last act that is required of them by

law. They have original jurisdiction up to that time. After the register's and receiver's receipts have been issued, as they had in the Cunningham case, they had no jurisdiction, original jurisdiction, but it was then in the Commissioner of the General Land Office, subject to the supervisory power of the Secretary, so that I found at once there was no legal difficulty in cutting them out. They get their jurisdiction to try contested issues, over questions that arise after the issuance of the final register's and receiver's receipt, by virtue of a regulation rather than by virtue of law, so that I found in investigating the matter that the course that I wanted to pursue was readily open and could be pursued.

After I had had that conversation with Mr. Gray—

Mr. JAMES. Right there; would the register and receiver have passed upon the claim of his own son to land?

Mr. PIERCE. Mr. James, I do not know; but I was not going to give him an opportunity to do it.

Mr. JAMES. It appears to me that in a matter of that sort that a man with much self-respect naturally would have stated that he would not pass on a claim where his own son was involved.

Mr. PIERCE. I presume that even in the event that we had submitted it to him for determination, that some provision would have been made to omit him from the hearing of that particular case.

The CHAIRMAN. But, Mr. Pierce, they had exhausted their jurisdiction when they passed upon the application for final entry and had issued a receipt.

Mr. PIERCE. Yes; they had exhausted their jurisdiction.

The CHAIRMAN. And a question whether a patent should issue or not was not a question for them to pass upon—

Mr. PIERCE. Precisely.

The CHAIRMAN. But the commissioner and the department.

Mr. PIERCE. Precisely. But the point that I want to make—

The CHAIRMAN. But let me go further. And on the question then—if you had submitted it to them—whether a patent should issue or not, over that question they had no jurisdiction.

Mr. PIERCE. No jurisdiction whatever. It was simply as to whether or not they should hear the case. They could hear the charges under the regulations we had.

Mr. JAMES. But then, if that is true, your stipulation to get it out of his hands did not effect much did it; if he really did have no jurisdiction of it?

Mr. PIERCE. Now, Mr. James, I do not want to undertake to state what the results would be. What I am undertaking to impress upon the committee is the line of my connection with it and my reason for doing things.

Mr. JAMES. I am not questioning that. I am hearing with a great deal of interest that part of your testimony. But the point I was calling to your attention was that if the question which you answered in the affirmative—which the chairman directed to you—is right, that they had no jurisdiction, then your stipulation that the case was to be brought direct to the department for decision was of no effect.

Mr. PIERCE. Now I meant to go a little further. When I speak about original jurisdiction I speak of the law in the statute books. The statutes of the United States give original jurisdiction to the register and receiver up to the time that they have issued the final receiver's

receipt. The statutes give the Commissioner of the General Land Office original jurisdiction from the time that a receiver's receipt is issued up to the time that a patent is issued. Now for a matter of convenience to the General Land Office they have rules and regulations and customs to refer any issues that come up between the time of the receiver's receipt and the time of the issuing of the patent—any issues that are raised they have regulations referring them back to the register and receiver for the purpose of taking the testimony. That is by virtue of regulation rather than by virtue of law.

Mr. JAMES. But only for the purpose of passing upon the case, Mr. Pierce; but they also pass upon the question—that is, they give their judgment upon the issues as framed.

Mr. JAMES. And the Department of the Interior sits rather as an appellate court upon what the judgment of the register and receiver is upon the evidence taken.

Mr. PIERCE. Just a minute. The register and receiver's judgment is a case that would arise after the issuing of the receiver's final receipt is purely advisory, nothing else; purely advisory. The judgment that the register and receiver makes before the issuing of the receiver's final receipt is an original judgment.

Mr. JAMES. You mean it is a final judgment?

Mr. PIERCE. It is a final judgment, and binding unless it is appealed from.

Senator SUTHERLAND. The authority which the register and receiver have after the issuance of a final receipt is one delegated to them by the Commissioner of the General Land Office?

Mr. PIERCE. Yes.

Mr. JAMES. And which is subject to review by the Commissioner of the General Land Office—their action?

Mr. PIERCE. Yes; subject to review.

The CHAIRMAN. Their opinion that they give in such case is merely advisory?

Mr. PIERCE. Yes; that is it.

The CHAIRMAN. It is not in the nature of a judgment?

Mr. PIERCE. Yes; that is right.

The CHAIRMAN. So this register and receiver then in Alaska had issued final certificates to all these entrymen known as the Cunningham group?

Mr. PIERCE. Yes; they had.

Mr. JAMES. Including his son?

Mr. PIERCE. Yes, sir; they had.

Mr. JAMES. And to some others of his family?

Mr. PIERCE. I do not know. All I do know is that his son was one of them. Mr. James, I do not want to state anything except that which I know.

Mr. JAMES. I would not have you do that myself.

Mr. PIERCE. The particular fact that this man was the son of the register was called to my attention when we were examining the case. I did not know about whether there were any other relatives of the land officers.

Senator PURCELL. Mr. Pierce, it is a fact, is it not, that the receiver's receipt is issued by the register and receiver and nobody else?

Mr. PIERCE. Yes, sir; that is it.

Senator PURCELL. Well, then, the register and receiver have a duty to perform, have they not?

Mr. PIERCE. Yes, and they had already done it in this case.

Senator PURCELL. I mean, speaking generally, do they not?

Mr. PIERCE. Yes, sir.

Senator PURCELL. They must take the testimony, and they must pass upon it?

Mr. PIERCE. Yes.

Senator PURCELL. And they must issue the receipt?

Mr. PIERCE. Yes.

Senator PURCELL. No other officer has that authority?

Mr. PIERCE. That is right.

Senator PURCELL. They do in a way, then, have functions to perform other than that delegated to them?

Mr. PIERCE. Senator Purcell, you have not got the drift of my point. I presume I did not make it as clear as could have been. In those Cunningham cases, registered receipts, final receipts, had all been issued in the year 1907, so that the original jurisdiction of the register and receiver had terminated when they issued the final receiver's receipt.

Senator PURCELL. That is true.

Mr. PIERCE. These questions that came up in 1909 when I gave the matter attention were questions to be determined after the register and receiver had exhausted their original jurisdiction.

Senator PURCELL. I understand that, Mr. Pierce, only I was speaking in general with regard to what Mr. James had inquired about, as to whether the register and receiver—

Mr. GRAHAM. Is it open to either the claimants or the land office to remove the case from the register and receiver to the Land Commissioner, or how is that?

Senator PURCELL. Not until there is a determination by them, is it?

Mr. GRAHAM. I mean, after the register and receiver have passed upon the question, how may it be taken? I do not think it would be proper to say, How can it be appealed, but how may it be removed to the Commissioner of the Land Office?

Mr. PIERCE. It is there. The minute that they issue, the register and receiver have issued their final certificate their jurisdiction stops, and, under the law, from that minute on the jurisdiction is in the Commissioner of the General Land Office, subject to the supervisory control of the Secretary, and in its own affirmative action.

Mr. GRAHAM. What steps are necessary to be taken to have another hearing before the commissioner?

Mr. PIERCE. The charges are usually filed.

Mr. GRAHAM. By whom?

Mr. PIERCE. In this particular case the charges were formulated upon evidence gathered by Mr. Glavis and others.

Mr. GRAHAM. You are thoroughly familiar with those cases, but generally, in other cases, how does it come out?

Senator PURCELL. By appeal.

Mr. VERTREES. Suppose a claimant is dissatisfied with the judgment of the register and receiver?

Senator PURCELL. He can appeal?

Mr. PIERCE. Yes. If the register and receiver decide against the claimant upon his case, he appeals or may appeal.

Mr. GRAHAM. How does he appeal?

Mr. PIERCE. Appeals from the judgment of the receiver.

Mr. GRAHAM. You say the matter goes from the register's office to the commissioner's office?

Mr. PIERCE. Yes; he may appeal.

Mr. GRAHAM. Now, what does he have to do to let the commissioner know that he wants to appeal?

Mr. PIERCE. He files appeal papers with the register and receiver, and those come up with the record.

Mr. GRAHAM. Are there in the usual course of business there—have there been many instances where the commissioner raised a question against the decision of the register and receiver; and if there have been many, do you recall them?

Mr. PIERCE. Constantly. When the record is sent down here which contains the judgment of the register and receiver, it is examined by the Commissioner of the General Land Office and his force; and there are constantly, there are times innumerable, where upon the examination of the papers the Commissioner of the General Land Office refuses to follow the action of the register and receiver.

Mr. GRAHAM. What is the procedure in that case?

Mr. PIERCE. No procedure at all. Except the papers are sent down.

Mr. GRAHAM. He also notifies the claimant in some way, does he not, of his adverse ruling and of his reversal of their judgment?

Mr. PIERCE. Yes—wait a minute, Mr. Graham. Whenever the commissioner decided adversely upon the acts of the register and receiver; decides adversely to the claimant he sends a general order out "that I decide this case adversely to the claimant." General order to the register and receiver "that I decide this case adversely to the claimant and you will please notify the claimant that he has a certain length of time in which to appeal or in which to correct his record, whatever it may be."

Mr. GRAHAM. Appeal to whom?

Mr. PIERCE. Then he appeals, if he desires to pursue that course.

Mr. GRAHAM. Appeals to whom?

Mr. PIERCE. From the action of the commissioner to the Secretary. Then there we have, as I stated the other day, about 3,000 appeal cases that come to us from the General Land Office a year.

Mr. GRAHAM. When the commissioner acts upon the report of the register and receiver, he does so on the record transmitted to him and without notice to the claimant?

Mr. PIERCE. Now, I do not want to undertake to answer that, Mr. Graham, that he does it without notice. I am not so familiar—

Senator PURCELL. That is the practice?

Mr. PIERCE. Yes, sir. What I mean is that I am not so familiar with that method of procedure between the register and receiver and the commissioner as some others who will be called upon to testify.

Mr. GRAHAM. I thought you knew all about it.

Senator PURCELL. The commissioner has the same testimony before him as the register and receiver has. It is all written down and sent up to the Commissioner of the General Land Office, is it not?

The CHAIRMAN. Mr. Pierce, evidently Mr. Graham is not familiar with the routine of the Land Office. I want to put some questions to you to clear this matter up.

Mr. GRAHAM. Mr. Chairman, he says he does not know.

Mr. PIERCE. No; I did not say I did not know. I say I am not as familiar with it as some others.

Mr. GRAHAM. We want some one here who knows.

The CHAIRMAN. In case a land applicant comes to the register and receiver to make his final entry and it is denied him upon the proof he presents, he can appeal to the commissioner?

Mr. PIERCE. Precisely so.

The CHAIRMAN. And all the papers are sent up to the commissioner?

Mr. PIERCE. Precisely.

The CHAIRMAN. And he can file through his lawyer an argument or brief?

Mr. PIERCE. Precisely. That is done every day and many times a day.

The CHAIRMAN. Now take the other case, Mr. Pierce. Suppose the register and receiver grants the application to issue a final receipt. The Government does not take a formal appeal; the papers are sent up and considered by the commissioner, is that not true?

Mr. PIERCE. Yes, sir.

The CHAIRMAN. There is never such a thing as an appeal by the Government from the decision of the local officers—that is right?

Mr. PIERCE. Yes, sir.

The CHAIRMAN. They send up the papers and then the commissioner considers them?

Mr. PIERCE. Yes, sir.

Senator FLETCHER. The effect of all you have said, Mr. Pierce, is that there was no occasion for getting an agreement between the parties to have this hearing before the commissioner instead of the land office at Juneau. You had the right to do that irrespective of any agreement. That is your position in regard to that, is it not?

Mr. JAMES. And his finding amounted to nothing.

Mr. PIERCE. No; I am not willing to say that. Our law force said that was the proper method to pursue, to require these stipulations.

Senator PURCELL. Mr. Pierce, after the register and receiver had determined, had they any authority in law to reopen it and investigate it again?

Mr. PIERCE. Not unless there was an issue framed up upon the reports made by the special service. When that issue is framed up upon the reports made by the special service, then, under the regulations, as I understand it, the trial of that issue would be referred back to the register and receiver to take the evidence and proof and report their findings.

Senator PURCELL. The commissioner may do that?

Mr. PIERCE. Yes; that is done all the time. So far as the proceedings in the General Land Office are concerned, there are many that are far better qualified to speak of it than I am myself.

Senator ROOT. Could we not go on with another subject, Mr. Chairman?

The CHAIRMAN. Please proceed.

Mr. PIERCE. Mr. Gray and I had that conversation on the 27th day of June which related to the hearing. Mr. Gray asked me if the charges had been formulated, and I told him I did not know whether they had or not; that I would find out the next day. Gray was down Sunday, and the next day I asked Mr. Finney to go to the General Land Office to see if the charges had been put in formal

shape, and he reported to me that they had not, and I then sent a telegram to Mr. Glavis which I do not find in the records. It is as follows:

WASHINGTON, June 28, 1909.

LOUIS R. GLAVIS,
Chief Field Division, Seattle, Wash.

This office desires early action Cunningham cases. Please send your recommendations to commissioner as soon as possible. Wire.

(Signed) FRANK PIERCE,
Acting Secretary.

The CHAIRMAN. That is admitted.

Mr. PIERCE. At the same time I told Mr. Finney, who is the man looking after the matter for me, that is, assisting me in the department, to prepare a letter.

Mr. BRANDEIS. That telegram is already in the record.

Mr. PIERCE. I did not see it. I told Mr. Finney to prepare a letter to the Commissioner of the General Land Office stating what I had determined upon, and that letter is dated June 20, 1909. I do not know where it is in the records.

The CHAIRMAN. Please read it.

Mr. PIERCE. The letter is as follows:

DEPARTMENT OF THE INTERIOR,
Washington, June 29, 1909.

The COMMISSIONER OF THE GENERAL LAND OFFICE.

SIR: It is the desire of this department, and, presumably, of all parties in interest, that action upon the Alaskan coal entries embraced in what is known as the Cunningham group, be had at the earliest practicable date.

Chief of Field Division Glavis is to submit his recommendations to your office as soon as possible, and in view of the fact that, so far as known, all of the witnesses whose testimony will be taken, in the event that hearings are ordered in the cases or in any of them, reside in the United States, I have to direct that you instruct the chief of field division, if hearings be ordered, to endeavor to secure from the defendants stipulations for the taking of the evidence before qualified officers, to be designated by the Commissioner of the General Land Office, at or near the residences of the respective witnesses, the stipulation also to contain the provision that the evidence, when taken, shall be forwarded by such officers directly to the Commissioner of the General Land Office, the record to be considered by him when made up, without reference to the local land office in Alaska. This will effect a very material saving of time, and it is believed that the defendants will be glad to consent thereto.

Very respectfully,

(Signed) FRANK PIERCE, Acting Secretary.

Mr. PIERCE. Now, I have detailed, as far as I now recall it, all of the conversation that I had with anybody during that period of time which relates to the Cunningham coal cases.

Mr. VERTREES. In stating your reason for having the matter brought immediately to the department instead of being first considered by the register and receiver, you said there was a strong lobby in the department.

Mr. PIERCE. Yes, sir.

Mr. VERTREES. What do you mean by that? Explain it fully.

Mr. PIERCE. I mean by that that there were a great number of residents of Alaska and those interested in Alaska, who came into the department during all of the winter of 1907 and up to the time of the passing of the act of May 28, 1908, for the purpose of getting some legislation, as they said, to relieve the coal situation there.

Mr. VERTREES. Did they come to the department?

Mr. PIERCE. Yes, sir; they came to the department.

Mr. VERTREES. Did they come to the department more than to Congress, or did they go to both?

Mr. PIERCE. They were also before the committees in Congress. I did not have that subject up for my consideration—the Alaska coal situation—and I do not recall that I talked to them at all about it except that I would speak to them and say, "How do you do?" and "How are things getting along?" or something of that kind. It was merely incidental.

Mr. JAMES. Is it usual for the department to allow men to come there and lobby with them about claims pending before the Land Department?

Mr. PIERCE. Those were not claims.

Mr. JAMES. But, as a general rule, do you permit men who have claims before the Interior Department to come there to lobby? Do you not require them to come through the regular channels?

Mr. PIERCE. Mr. James, there was no mention that I ever recall of any particular case in Alaska. What they were after was an amendment to the act of 1904, which amendment was brought about by the act of May 28, 1908. That is what they were after. That amendment, they said, was not entirely satisfactory, but that is what they got. There was no lobby upon any particular case, and no mention of any particular case. It was the general situation, the coal situation in Alaska.

Mr. JAMES. But your statement, as I thought I understood it, was that there was quite a strong lobby from Alaska before the department.

Mr. PIERCE. I meant, when I said before the department, coming in and out in the department there, seeing Secretary Garfield and others.

The CHAIRMAN. That was while Mr. Garfield was Secretary of the Interior, was it?

Mr. PIERCE. Yes, sir.

Mr. VERTREES. That is, they were interested in the Alaskan coal situation. They were not, as I understand you, pressing any particular claim on anybody in the department.

Mr. PIERCE. They did not; so far as I know they did not speak of any case; at least I did not hear any case mentioned. That was the general situation, that the laws were insufficient and should be amended.

Mr. VERTREES. After the passage of that act, you gave a hearing yourself on the question, did you not, to Mr. Falcon Joslin and his people?

Mr. PIERCE. Soon after Mr. Ballinger came here——.

Mr. VERTREES. Later in 1909?

Mr. PIERCE. Yes, in 1909; that was the time I gave Mr. Falcon Joslin a hearing, and the hearing is reported here in the record.

Mr. VERTREES. Now, Mr. Pierce, I wish you would state to the committee what happened with reference to the opinion which you gave, construing and interpreting the act of May 20, 1908?

Mr. PIERCE. You mean how that came about?

Mr. VERTREES. Yes, sir.

Mr. PIERCE. The first I knew about that matter was, it was brought to my attention by Mr. F. W. Clements of our law force, the

first assistant attorney of our law force, and Mr. Finney; that was the first that I knew about it. They brought the paper which is called my opinion of May 19, 1909, already prepared, to me. I was familiar somewhat with the act of May 28, 1908. I became familiar with it because during the absence of Secretary Garfield in Honolulu I fell to my lot to assist in the preparation of the instructions to be issued to the registers and receivers under that act of May 28, 1908. Several arguments were had before me, different parties, attorneys, towns coming in and representing it, and therefore I was somewhat familiar with that act. Coming back to the time this was presented, on the 19th of May, Mr. Clements and Mr. Finney brought this letter to me, already written. I took down the statutes and looked them through with them. The question which I supposed and believed that we had decided—the precise question and the question that I talked to them about—was this precise question, Might a bona fide locator between the date of his location and the date of the passage of the act of May 28, 1908, do the things which the act provided he might do and still have his patent? In other words, as to whether it was retroactive from the date of the passage of the act back to the date of the bona fide location. I held that it was a permissive act, and that it related back to the date of the location. That was the precise question that Mr. Finney and Mr. Clements laid before me and that I supposed we were deciding and believed we did decide in that act of May 28, 1908. There are three periods of time to be considered; first, that period of time prior to the date of a bona fide location, and as to that the act does not apply, if the location is fraudulent, because the act itself is a limitation and says it only refers to bona fide claims made by individuals in their own interest, and therefore it could not cover that period of time. The next question was as to whether it covered the period of time between the date of the location and the date of the passage of the act; that was the question that I decided. The next question, of course, the next period of time, is after the date of the passage of the act, and, of course, all things done after the passage of the act which are permitted to be done under that act are covered in that period of time.

Mr. VERTREES. Who brought that matter to your attention, namely, that your opinion was desired with reference to that act?

Mr. PIERCE. The first I ever heard of it, Mr. Vertrees, was when Mr. Finney and Mr. Clements came into the office with the paper already prepared.

Mr. VERTREES. Had the Secretary said anything with respect to it before you?

Mr. PIERCE. Never a word, sir.

Mr. VERTREES. If there had been any previous conversation between the Secretary and Mr. Glavis, Mr. Schwartz, and Mr. Dennett, any of them, in which it was understood that the opinion of the Attorney-General was to be taken, had you any knowledge or information of it at any time prior to the rendering of your opinion?

Mr. PIERCE. I never had any hint about it. I signed that opinion by virtue of the general order of business under which I was acting. That general order is in the record. I introduced it the last time I was at the stand.

Mr. GRAHAM. It is at page 2961.

Mr. PIERCE. The language of the order under which I was acting is as follows:

Until further ordered the business of the department will be referred for action to the following officers:

To the Secretary: All matters not covered by assignments hereinafter made to the First Assistant Secretary and the Assistant Secretary. Questions on matters before those officers which involve a reversal of existing decisions of the department, modification or change in the policy of the department, or which are of unusual importance, shall be brought by said officers to the attention of the Secretary before final action. All communications addressed to the President; all communications addressed to members of the House and Senate and the heads of other departments not connected with the work of the First Assistant and the Assistant Secretaries.

To the First Assistant Secretary: All matters from the General Land Office, including appeal cases, and all matters from the Indian Office.

That was the order under which I acted in the regular and orderly course of business.

Mr. VERTREES. What was Mr. Clements's position at that time?

Mr. PIERCE. He was first assistant attorney for the Interior Department. Mr. Lawler, the assistant attorney-general for the Interior Department, was away at that time in California, I think, and Mr. Clements was acting in his place. He was, therefore, at that time chief law adviser of the department, and the man that we would ultimately go to during the absence of Mr. Lawler for our advice upon questions of law.

Mr. VERTREES. Did Mr. Clements and Mr. Finney, singly or together, present the matter to you for your consideration?

Mr. PIERCE. They were both together, as I recall it.

Mr. VERTREES. Do you recall whether they then presented and had prepared a written memorandum in the nature of proofs of the statements of their views with reference to the question, any or either of them?

Mr. PIERCE. I do not recall that I saw any of those.

Mr. VERTREES. Did they have the opinion which they desired to present for your signature prepared then?

Mr. PIERCE. Yes; was it already prepared when it was brought to me. That is the usual course of business. Matters of that character are brought in already written up.

Mr. VERTREES. Did you discuss it with them?

Mr. PIERCE. We briefly discussed it. I was familiar with the act of May 28, 1908, and knew its general terms.

Mr. VERTREES. If I have understood you, Mr. Ballinger had said nothing to you with respect to the opinion as to the Cunningham claims?

Mr. PIERCE. No, sir. I have detailed all the conversation I had with him with reference to the Cunningham claims. He did not say a word to me about the act of May 28, 1908.

Mr. VERTREES. Did this opinion have anything to do with the Cunningham claims, as you understood them to be?

Mr. PIERCE. I understood it did not have anything to do with it. The fact of the matter is I did not think of the Cunningham claims at the time this opinion was presented and signed. In looking over the memorandum prepared for the Attorney-General I find that that memorandum expressly excludes them, but that was not called to my attention at that time particularly.

Mr. VERTREES. All that you can state is that you did not have them in mind at that time?

Mr. PIERCE. No; I thought it was a construction of a general statute.

Mr. VERTREES. You are acquainted with Mr. L. R. Glavis?

Mr. PIERCE. No, sir; I am not acquainted with him. I have just met him once.

Mr. VERTREES. Well, he has testified in this case, among other things—he has made this statement—I call attention to the statement made on page 221 of the record. First, he there made his answer:

Mr. GLAVIS. Yes. The way that was—the next day after we wrote the letter, or the same day I sent that letter over to the Secretary's office—I was called over to the Interior Department and notified that Mr. Pierce wanted to see me. I went in to see Mr. Pierce, and he said that Mr. Ballinger had turned over the matter to him for opinion, and that he had stated he did not want to have anything further to do with it, owing to his having represented some of the Alaska coal claimants, and that he had turned the matter over to him; that they would write the opinion there; that they could not send it over to the Department of Justice.

Now, I want you to go next to page 758, if you please.

Mr. PIERCE. There is some more on page 222.

Mr. VERTREES. Yes; on page 222 there is an answer given by Mr. Glavis in response to the statement to "go on," as follows:

Mr. GLAVIS. And they were discussing that opinion, and they asked my views when it came in. I said, "You all know what my views are, because I have discussed them before." I said: "My opinion is that the act never intended that claims that were fraudulent should be allowed to be patented. I didn't think Congress intended to validate fraudulent entries," is the way I put it. I said my views are stated in those reports I sent in in the spring.

Mr. PIERCE. Mr. Vertrees, take my book, please. (Handing Mr. Vertrees record of testimony.)

Mr. VERTREES. I see you have marked in your book this further answer of Mr. Glavis in addition to that answer which I read:

The CHAIRMAN. You substantially agreed with Mr. Schwartz, then?

Mr. GLAVIS. Yes, sir. And Mr. Clements dictated that opinion which appears next to the bottom of page 16.

I want to call your attention, Mr. Pierce, if you will allow me to do so, first, to page 221, which I have read, and then to page 222, and then in the same connection, for it is a necessary part of it, to page 758 of the cross-examination, where this happened:

Mr. VERTREES. What next do you know about it?

Mr. GLAVIS. The next thing I know about it, on the 19th or 18th, the next day, I think, after I took it over there, Mr. Pierce sent for me and stated that the Secretary had turned the letter over to him and had asked him to render an opinion on it.

Now farther down on the same page:

Mr. VERTREES. Did he—

(Meaning Mr. Pierce)—

all you that the Secretary had given it to him?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Had handed him the paper?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Mr. Pierce told you that?

Mr. GLAVIS. Yes, sir.

Mr. VERTREES. Don't you know it never came to Mr. Pierce at all; that it was sent by messenger to Mr. Finney and handled by him, and that it came into the office that way?

Mr. GLAVIS. No, sir.

Mr. VERTREES. And it came from those subordinate officers to Mr. Pierce, and that he had nothing to do with it until it was brought to him; do you not know that to be the truth of this matter, Mr. Glavis?

Mr. GLAVIS. No, sir; and I don't believe it to be so, either.

Mr. MADISON. Why not?

Mr. GLAVIS. Because I believe Mr. Pierce was telling me the truth then.

Now, with reference to those statements, Mr. Pierce, I ask you whether or not you ever made those statements to Mr. Glavis then or at any time?

Mr. PIERCE. No, sir. The first time that I knew anything about this letter was the time that Mr. Finney and Mr. Clements brought it to my desk for adoption. I had never had any conversation whatever with Mr. Glavis upon that subject—the act of May 28, 1908. The only time I had any conversation whatever with Mr. Glavis was the time that he came with Mr. Finney to my office to go through the Cunningham charges, prior to the time that we had the conference with Mr. Moore. I told Mr. Glavis at that time that the Secretary had turned over the Cunningham cases to me, as preliminary to the conference we were having, but I never had any conversation with Mr. Glavis about this act of May 28, 1908. There are three good reasons for that—good reasons to me. In the first place, my memory is absolutely clear upon it; in the second place, Mr. Ballinger did not turn the matter of this opinion over to me; he gave no directions whatever about it. I was acting under the general orders that I have read to you as I would in any case of the kind; and, in the third place, I would not consult Mr. Glavis on questions of law when we had a law force of about 30 men in our own department, and I did not.

Mr. VERTREES. Then, if I understand you, Mr. Ballinger did not in point of fact, hand that opinion to you?

Mr. PIERCE. He did not; we did not have any talk about it—never at any time until—

Mr. VERTREES. Or the statement on which the opinion was based?

Mr. PIERCE. That is true. He did not.

Mr. VERTREES. Did he send it to you, to your knowledge, in any way?

Mr. PIERCE. Not to my knowledge, in any way whatever. I am telling you how it got there. The only way I know about it.

Mr. VERTREES. Through Mr. Finney and Mr. Glavis?

Mr. PIERCE. Yes, sir. What happened back of the time it came to me, Mr. Finney and Mr. Clements will have to speak with regard to, because I do not know.

Mr. VERTREES. Did Mr. Ballinger, at any time prior to the rendering of your decision, speak to you upon the subject, or communicate with you in any way; that is, upon the subject of your opinion on that act or its construction?

Mr. PIERCE. He did not.

Mr. VERTREES. Then, as I understand you, you did not tell Mr. Glavis that he had handed it you, or had not done so?

Mr. PIERCE. I did not tell Mr. Glavis that; I did not talk with him about it, and it is not true. He did not hand it to me.

Mr. VERTREES. Did you have any conversation with Mr. Glavis other than the one you have detailed, previous to that at all, with reference to this question?

Mr. PIERCE. That was the only conversation I had with him.

Mr. VERTREES. What did you do with the opinion after you signed it, Mr. Pierce?

Mr. PIERCE. It went out in the regular course of mail to the General and Office. I will tell you from that on, or are you through on that ranch?

Mr. VERTREES. Yes, sir; go ahead.

Mr. PIERCE. Several days afterwards the Secretary came—after the opinion was rendered—to my desk, and said that the act of May 28, 1908, was a far-reaching act, and he thought we had better submit it to the Attorney-General; and in pursuance of that statement a letter was prepared, about the 26th, I think, of May, submitting the whole question to the Attorney-General.

Mr. VERTREES. That would be some eight or ten days after your opinion that the matter was submitted?

Mr. PIERCE. It would be a week after, anyway, I should think.

Mr. VERTREES. But previous to that he had not mentioned it to you at all?

Mr. PIERCE. He had not talked with me about it.

Senator FLETCHER. Have you seen the statement upon which that opinion was based, Mr. Pierce, given on page 195 of the list of documents?

Mr. PIERCE. I have not the list of documents in my hand.

Senator FLETCHER. It is just preceding the opinion. When did you first see that statement?

Mr. VERTREES. It is in the record, at page 562.

Mr. PIERCE. Senator Fletcher, I can not say positively whether it was shown to me by Mr. Finney and Mr. Clements at the time they brought in the opinion of May 19, 1909. I can not state positively as to that.

Mr. VERTREES. Was it not attached to the opinion?

Mr. PIERCE. It may have been. I can not say positively whether it was or was not.

Senator FLETCHER. If so, that was the first time that you had seen the statement of the opinion?

Mr. PIERCE. Yes, sir; the first time that I had seen it at all. The subject was not called to my attention at any time by anybody until Mr. Clements and Mr. Finney brought it to me after this letter was prepared.

Mr. OLMSTED. Mr. Pierce, referring again to page 221, why did you send for Mr. Glavis?

Mr. PIERCE. I did not send for him.

Mr. OLMSTED. He there says that you did.

Mr. PIERCE. I say that is a mistake; I did not send for him.

Mr. OLMSTED. Why did you say to him that you would write the opinion, or it would be written in the department, and you would not send it over to the Department of Justice?

Mr. PIERCE. I did not say that. I did not have any talk with him about it.

Mr. VERTREES. Was the question of whether you should do it, or the Attorney-General should do it, discussed with you at all by anybody?

Mr. PIERCE. I do not recall that it was.

Mr. VERTREES. You do recall that it was not discussed with Mr. Glavis?

Mr. PIERCE. Mr. Vertrees, I want to impress upon the committee that I did not have any talk with Mr. Glavis except at that one time, and we did not talk about this subject at all.

Mr. VERTREES. It was not up, then?

Mr. PIERCE. It was not up. The only time was about the Cunningham cases, when I was going over them with Mr. Finney to make an answer to Governor Moore as to what we should do.

Mr. JAMES. Did you ever see the letter that was prepared for the signature of the Secretary of the Interior, which was not signed by him, submitting this matter to the Attorney-General?

Mr. PIERCE. Have I ever seen it?

Mr. JAMES. Did you at that time?

Mr. PIERCE. The answer is, that I do not now recall it, Mr. James. I do not recall seeing that. It is fairly probable that Mr. Finney and Mr. Clements showed it to me, because that subject was the general question.

Mr. JAMES. But that letter was directing this question for decision to the Attorney-General of the United States, was it not?

Mr. PIERCE. My attention was not particularly called to that feature of it.

Mr. JAMES. If you had come across that letter, then, you would have known that this question, instead of being submitted to you for decision, was to be submitted to the Attorney-General direct, would you not?

Mr. PIERCE. Oh, I do not know. We get lots of letters of different forms. They are prepared by the General Land Office and sent over, and they are referred to our law force, and they digest them and present the matters to us after they have digested them.

Mr. JAMES. But is it usual in the procedure in the Land Office to prepare a letter submitting a certain question to the Attorney-General of the United States, and direct that letter to him, and then submit it to one of the attorneys in your department?

Mr. PIERCE. Always; yes, sir. It would be always sent to the attorneys in our department.

Mr. JAMES. While it is directed to the Attorney-General?

Mr. PIERCE. Yes, sir; always. Everything that involves law questions that come from the General Land Office to our department goes to our law force for action before it is brought up to either the Secretary—or I should say before final action is taken upon it.

Senator ROOT. Mr. Pierce, you spoke of your law force. That is a branch of the Department of Justice, is it not?

Mr. PIERCE. The Assistant Attorney-General for the Interior Department is an officer for the Department of Justice, and is paid by the Department of Justice, and keeps his office in our building as a matter of convenience. The other force—all the rest of the force—are employees of the Interior Department.

Senator ROOT. Who is the head of the law division?

Mr. PIERCE. Mr. Oscar Lawler, the Assistant Attorney-General.

Senator ROOT. That is, the Assistant Attorney-General is the head of the law force?

Mr. PIERCE. Yes, sir.

Mr. VERTREES. About how many constitute the law force of the Interior Department?

Mr. PIERCE. About 25. They vary more or less; it depends on the amount of work we have. That is, excluding the 12 men who are working on the Board of Pension Appeals.

Mr. VERTREES. As I have understood you, though, at this particular time, Mr. Lawler, the Assistant Attorney-General, was absent and Mr. Clements was acting as Assistant Attorney-General?

Mr. PIERCE. Yes, sir; he always does during the absence of Mr. Lawler. Mr. Lawler was in California.

Mr. VERTREES. I come now to the matter of the cooperative movement, Mr. Pierce, between the Forestry Bureau and the department. I wish you would state to the committee what you know about that, and what connection you had with that. You appeared to have considered it.

Mr. PIERCE. Have you got through with the other branch of the subject?

Mr. VERTREES. Is there any other matter or thing in connection with the other branch that you desire to speak about?

Mr. PIERCE. The Cunningham cases, I do not remember, except one time, I think, in July or August, Mr. A. C. Shaw, of the Forestry Service, came to the department and wished to have the hearings in the Cunningham cases put off. I told Mr. Shaw that I had promised Governor Moore a speedy hearing, but that I really did not want to put them off, but we would delay them for any reasonable time at he might require to get ready to assist in the trial of those cases. I learned for the first time then from Mr. Shaw that part of the Cunningham cases were on a forest reserve in Alaska. The result of it was that I wrote a letter to the Secretary of Agriculture in response to his request, granting a continuance of the hearings in the cases for a reasonable time; I can not recall what the length of time was. That is substantially all as to that. I do not want to go into that.

Mr. VERTREES. What is it that you wish to go into?

Mr. PIERCE. Unless you want it.

Mr. VERTREES. Take your own course, Mr. Pierce.

Mr. PIERCE. I have got substantially through with my testimony, except that I would like to speak of the Roosevelt dam matter.

The VICE-CHAIRMAN (Mr. McCall). Before you leave the Cunningham cases, can you tell the committee what the present status of those cases is?

Mr. PIERCE. They are now being tried before, or the testimony is being taken before, a commissioner, Mr. McGee. As to just what the status of the taking of the testimony is, I do not know.

The VICE-CHAIRMAN. Do you know when they are likely to be ripe for final decision by the Land Office?

Mr. PIERCE. No, sir; I do not. I suppose the only way we could get that information would be from either Mr. Sheridan, who is taking the testimony for the Government, or Mr. McGee, who is sitting as commissioner. We have not limited them at all; we have given them entire latitude to take all the evidence that they think proper.

The VICE-CHAIRMAN. What would be the next step, the next thing to be done in the Land Office? Would it come to the commissioner for his decision?

Mr. PIERCE. Yes, sir; after the evidence is reported by Commissioner McGee, it will be reviewed in the Land Office, and it will be the duty of the Commissioner of the General Land Office to decide it upon that record.

Mr. VERTREES. It was not up, then?

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Mr. PIERCE. Yes, sir; after the evidence is reported by Commissioner McGee, it will be reviewed in the Land Office, and it will be the duty of the Commissioner of the General Land Office to decide it upon that record.

The VICE-CHAIRMAN. Suppose the commissioner decided in favor of the claimants, then what would be the effect upon the cases? Would they have to go to any other officer?

Mr. PIERCE. Well, we have the supervisory control of that. I myself would not permit a patent to issue in the case, whatever turn the commissioner might take, until the department had had an opportunity to review the case.

The VICE-CHAIRMAN. Then it would come to you as Assistant Secretary; that is, assuming that the officers of the department were the same as they are now?

Mr. PIERCE. Yes, sir; it would come there. If the Commissioner of the General Land Office decided adversely to the Cunningham coal claimants they would take it up to the department then on an appeal.

The VICE-CHAIRMAN. So that in either case it would come up to the department; that is to say, you would not permit a patent to issue without going through the proceedings?

Mr. PIERCE. Not without examining the record.

The VICE-CHAIRMAN. And in either case, then, it would come before you for review?

Mr. PIERCE. Yes, sir; because the Secretary has turned the matter over to me to supervise and take charge of it, and therefore I intend to supervise all the procedures generally.

The VICE-CHAIRMAN. Then suppose your decision should be in favor of the claimants, would that settle it?

Mr. PIERCE. I think so, Mr. McCall; but I want to say this: In looking over the material, the Cunningham book or journal and the affidavits, I determined that a prima facie case had been stated in these affidavits. Now, if upon the hearing of the case it should appear that those entrymen violated the law I should have absolutely no hesitation in refusing the patents. If it should appear from the evidence that those gentlemen had located their claims in good faith and are entitled to a patent I shall give them their patents. It will depend absolutely upon the record. It is the duty of the department to determine the question fairly upon the record.

The VICE-CHAIRMAN. I was not attempting in any way, Mr. Pierce, to influence your action—

Mr. PIERCE. I understand it.

The VICE-CHAIRMAN. I wanted to find out the status of the case, and how it would ultimately be decided. Now, suppose your decision should be adverse to the claimants, could they take the matter to the courts?

Mr. PIERCE. No, sir; that is the end of it.

The VICE-CHAIRMAN. Then your decision would be in either case or either way an end of the case?

Mr. PIERCE. Yes, sir; it would end the case.

Senator PURCELL. Only as to matters of fact. The questions of law could be taken to the courts.

The VICE-CHAIRMAN. It could be taken to the court on matters of law, could it not?

Mr. PIERCE. I do not so understand it. We issue the patents on the record as made. It is for us to determine whether the claimants have satisfied the requirements of the law. If they have satisfied the requirements of the law they are entitled to patents.

Senator ROOT. Suppose you refused the patents?

Mr. PIERCE. I do not think it could then be taken into the court. The law is committed to us. The statutes have committed to us to determine whether or not they have satisfied the law.

Senator ROOT. Do you act judicially?

Mr. PIERCE. Yes, sir.

Senator ROOT. How do you reconcile your judicial attitude with the attitude of a prosecutor, which appears to be going on in your department?

Mr. PIERCE. That is a question, Senator Root, that has bothered me a good deal.

Senator ROOT. It has bothered me a good deal also. The law does not provide for the court to dispose of those claims, and I would like to know where the claimant who is being investigated and run down by your investigators, under your direction, gets his judicial consideration of his case when it comes up to the prosecutor to have it passed upon.

Mr. PIERCE. The law is in that state and always has been in that state, Senator Root. If that is not the proper way the law should be, then it is the duty of Congress to amend it. That is the very question that I have given very serious thought to.

Mr. GRAHAM. Is the theory underlying it that the granting of patents is a matter of grace and not a matter of right, and it is for your department to dispense with the grace?

Mr. PIERCE. I can not answer that.

Mr. GRAHAM. To dispense grace rather than dispense with it?

Mr. PIERCE. I can not say as to that.

Mr. MADISON. You recognize the party as having certain vested rights after he has actually located on land and made improvements, do you not?

Mr. PIERCE. That is my own individual position, Mr. Madison.

Mr. MADISON. And such being true—I am not at all criticising my friend's question, but assisting, if I can, in the illumination of the matter—that being true, it is not a question of grace. A man has an affirmative right if he has complied with the land laws.

Mr. GRAHAM. But in view of Senator Root's question, what affirmative right has he that he can enforce?

Senator PURCELL. He has the right that the law gives him.

Mr. GRAHAM. He has the right that any individual in the department chooses to give him.

Senator ROOT. My question went not to his right under the law, but where he was going to find the judicial judgment to pass on the matter.

Mr. GRAHAM. How can it be said that he has ever had a day in court?

Senator PURCELL. You can sue out a mandamus compelling the Secretary to issue the certificate.

Senator ROOT. But you can not compel the prosecutor to have the judicial duty of the judge. No mandamus can affect the mind of a man who is at the same time endeavoring to act judicially and act as a prosecutor.

Mr. JAMES. I do not understand that they always act as a prosecutor. Is it not their purpose as much to grant the man a patent if

he has complied with the law as to keep him out of it if he has not complied with the law?

Mr. PIERCE. That is it; yes, sir.

Mr. GRAHAM. But the principle which Senator Root suggests is that a man is only a human being, and if I understood him rightly, his question goes to the bottom of the case, in asking how you can expect one man to act in the capacity of prosecutor and judge.

Mr. PIERCE. Now, I want to say as to that, so far as the question of prosecutor is concerned, that I, speaking for myself in this particular instance, am no prosecutor at all. The General Land Office has a department that is doing the prosecution; that is Mr. Schwartz's division. He acts as prosecutor, so that I do not know what the evidence is until it comes to me. What I meant to say is that, upon examining the Cunningham journal and the affidavit which Mr. Glavis furnished me, I said, "As a matter of law there is sufficient stated in these to constitute a cause of action against the claimants, and therefore you are entitled to a trial." But theoretically Senator Root is correct, that the prosecution, perhaps, of the claimants should be left to the Department of Justice and leave the Interior Department free without influence one way or the other to determine it.

Senator ROOT. Do you mean, Mr. Pierce, that when the question of the issue of a patent comes to you in the performance of your duty under this general order, that you treat Mr. Schwartz and the people under him as being parties on one side and the claimants as parties on the other side?

Mr. PIERCE. Yes, sir; that is the way we treat them.

Senator ROOT. You do not identify yourself with Mr. Schwartz merely because Mr. Schwartz is a government official and you also are a government official?

Mr. PIERCE. No, sir. You state it precisely.

Senator ROOT. You hold the scales between the particular government officer on the one hand and the claimants on the other?

Mr. PIERCE. You have stated it precisely.

Senator ROOT. Do you think you have succeeded?

Mr. PIERCE. That is a hard question, seriously, Senator Root, to answer. I decide the appeal cases, as I have said, a large number of them, and I know that I get a full mead of cussing by the prosecution—Mr. Schwartz and his force—but I do not allow that to influence me. I try to do just as near right as a man can.

Senator PURCELL. Do you investigate those cases yourself?

Mr. PIERCE. No, sir; I do not. They come to me for investigation.

Senator PURCELL. They are investigated by somebody else, are they?

Mr. PIERCE. By the General Land Office—that is, the special service of the General Land Office.

Senator PURCELL. You practically yourself sign a judgment that is made up by somebody else and adopt it as your own?

Mr. GRAHAM. I do not think your minds meet.

Mr. VERTREES. I do not think you understood him, Senator.

Senator PURCELL. I mean in the instances of contests that you speak of.

Mr. GRAHAM. By investigating, you mean a study of the record?

Senator PURCELL. Yes. Do you study the record and examine the testimony and determine the cases from an actual inspection of the record of the testimony yourself?

Mr. PIERCE. That is, theoretically so.

Senator PURCELL. Is it in fact so?

Mr. PIERCE. I have not time. Once in awhile—

Senator PURCELL. Then you do not determine those matters?

Mr. PIERCE. Once in awhile I do read through a record.

Senator PURCELL. Once in awhile?

Mr. PIERCE. Yes, sir.

Senator PURCELL. And you say there are about three thousand appeals?

Mr. PIERCE. Yes, sir; appeal cases. I do it once in awhile. As a matter of fact, I have a force of 25 men there. They read the record and come to the conclusions on it.

Senator PURCELL. And direct the opinion?

Mr. PIERCE. Yes, sir; I do not ordinarily inquire into questions of fact, but I do always—nearly always—inquire into questions of law and examine them, and once in awhile when my special attention is directed to a particular case I look through the records for the facts in that particular case, but as the Department of the Interior is constituted it is absolutely impossible to do that and carry on the work.

Senator PURCELL. The usual way is for some other officer or clerk to go through the record, read through the evidence, and form his judgment, prepare an opinion, and present it to you?

Mr. PIERCE. Before a paper—what is called an opinion—is presented, at least three or four or five different ones go over the record and present it. They never allow it upon one examination, but upon several examinations.

Mr. VERTREES. When you say “different ones,” you mean persons of your law office?

Mr. PIERCE. Yes, sir; persons of our law force.

Mr. GRAHAM. How are these law clerks, or lawyers—whatever they are—paid? What is the range of pay that they receive?

Mr. PIERCE. Do you mean the amount?

Mr. GRAHAM. Yes, sir; per year.

Mr. PIERCE. The first assistant attorney gets \$3,000 a year. I think they have two positions of \$2,750, three or four of \$2,500, and several of \$2,250, and the rest \$2,000.

Mr. GRAHAM. They range from \$2,000?

Mr. PIERCE. Yes, sir. I am not giving you the exact details, but from \$2,000 to \$3,000.

Mr. GRAHAM. From what you know of it, the record in the Cunningham case will probably contain over 1,500 pages of printed evidence. How do the other 3,000 run in volume, speaking in round numbers?

Mr. PIERCE. Nowhere near like it. If you have a record of 200 pages of evidence, the law force says that it is a pretty good record, a good-sized record.

Mr. GRAHAM. Coming back to the Cunningham cases, suppose you, or whoever of your force studies the record in that case and decides it, should decide against the Government and order patents to issue, has the Government any recourse either as to the law or the facts of the case, or is it concluded by your decision?

Mr. PIERCE. I think it is concluded.

Mr. GRAHAM. Both as to the facts and the law?

Mr. PIERCE. I think so. The law has committed to the Department of the Interior, or to the Commissioner of the General Land Office, the duty of issuing patents subject to the supervisory control of the Secretary.

Mr. GRAHAM. You spoke of the Cunningham journal and the affidavits constituting, in your opinion, a prima facie case. Do you know how many affidavits are included in that statement?

Mr. PIERCE. Mr. Graham, I would not undertake to answer that. At the time I went through the record with Mr. Glavis and Mr. Finney there were lots of affidavits and reports, and the Cunningham journal had many things of that sort, and I was satisfied myself that the records were sufficient, and I acted mainly—or my judgment was made up mainly that the record was sufficient to constitute a cause of action upon the Cunningham journal.

Mr. GRAHAM. Is there any printed matter concerning the rules of procedure or practice of the Land Office?

Mr. PIERCE. I think so.

Mr. GRAHAM. Where is it to be found?

Mr. PIERCE. I will ask to have it brought here, Mr. Graham.

Senator PURCELL. I think we have a copy of it, Mr. Graham.

Mr. PIERCE. There are general instructions.

Mr. GRAHAM. I mean lately, something, for instance, with reference to the admissibility of evidence. Have you fixed rules?

Mr. PIERCE. I would prefer, Mr. Graham, that that question be answered by some of the officials of the General Land Office.

Mr. GRAHAM. When a record comes before you for your determination, do you go into the question as to whether the evidence in the record was properly offered in evidence, or not?

Mr. PIERCE. Yes, sir.

Mr. GRAHAM. If it was not properly offered in evidence do you consider it or do you reject it?

Mr. PIERCE. Well, if it is a matter in which the evidence is material to the issue I always consider it.

Mr. GRAHAM. Then your first answer would have to be modified, would it not?

Mr. PIERCE. Just what was your first question?

Mr. GRAHAM. My first question was whether you do require record evidence, documents offered in evidence, to be properly verified and identified and authenticated before you consider them as in evidence?

Mr. PIERCE. Let me put it in this way. If evidence, documentary evidence, is improperly offered, or copies are furnished instead of the originals, or anything of that kind, and I think that they would be very material, and that should be considered, I frequently order it back to have that question corrected in the record. So that I never refuse to consider them if they are material to the issue, because they should be and we always consider them.

Mr. GRAHAM. How long a time, or, rather, at what stage of the proceedings would you consider yourself authorized to order the case back and reopened?

Mr. PIERCE. Cases that come up to us upon appeal are constantly ordered back for a new trial, or for a new hearing, to take additional evidence upon additional points, and to recertify papers or things of

that kind, either to strengthen the record or bring in things that have been omitted.

Mr. GRAHAM. But it is in your discretion, is it not, whether to do that or not?

Mr. PIERCE. I take it that it is in my judicial discretion; yes, sir.

Mr. GRAHAM. And if a paper is improperly in the record, unless you do order the case back to have it properly proved you would not consider yourself at liberty to consider it as in evidence, would you?

Mr. PIERCE. Well, I do not know that I—

Mr. GRAHAM. Let me make myself clear by a specific case. Suppose a copy were offered in evidence and was in the record instead of the original, over the objection of the defendant, and it was material, when it came before you do you think you would have the right to refer the case back to have it properly authenticated?

Mr. PIERCE. Probably, if it was improperly authenticated, I would send that particular paper back and ask to have it properly authenticated and proved.

Mr. GRAHAM. You would not consider yourself at liberty to take it as part of the evidence in the case unless you did that?

Mr. PIERCE. That is true. We adjudge cases, Mr. Graham, just as a court of equity would do, to do absolute and exact justice between the Government and the claimant.

Mr. GRAHAM. Not quite as a court of equity would do, because a court of equity can be reviewed, and you can not. You can review yourself, if you want to.

Mr. PIERCE. The Department of the Interior sits as the supreme court—

Mr. GRAHAM. And it can not be reviewed except by itself on its own motion.

Mr. PIERCE. It is the supreme court sitting in the case.

Mr. GRAHAM. If one of your subordinates were assigned the Cunningham record for his consideration, and he found in it very material documents which were offered in evidence, but had not been properly authenticated, so that they could not be considered under the rules of evidence, it would be entirely for him to say whether he would throw them out and ignore them or recommend sending the case back to have it properly proved?

Mr. PIERCE. Let me say here, Mr. Graham, that when it comes to the Cunningham cases—

Mr. GRAHAM. I am asking it only as illustrative.

Mr. PIERCE. When it comes to the Cunningham cases, I shall not permit those cases to go out of the Department of the Interior without referring them probably to every man on our force who is capable of handling such questions to get the united judgment of the 25 men upon them. I shall not rely upon my individual judgment, and will do that. Nay, more, it is my present purpose that when these cases come up, these Cunningham cases, and we have had them examined by our bureau of lawyers of 25, and we make our judgment, to have the Attorney-General of the United States take up the record and go through it with an equal number of men in the Attorney-General's office. I want to leave this impression, that if the Cunningham claimants have made a clean record upon the hearing and are entitled to their patents we will do everything we can to give them their patents.

If, on the other hand, the record shows that they are not entitled to the patents, they shall not have them, but we will not arrive at a final conclusion until we have gone to the extreme limit in bringing the judgment of the best lawyers in our department, and also in the Department of Justice, to bear upon the question itself. That is the way I propose to do it.

Mr. GRAHAM. But, as a lawyer yourself, you see that your answer only emphasizes the fact that I have and the people have your personal promise as to how the law shall be administered. What I want to get at is the principle back of that point which the people may depend upon, regardless of personalities.

Mr. PIERCE. May I ask you a question? How would you suggest to have it done?

Mr. GRAHAM. If I go on the witness stand I will tell you.

Mr. PIERCE. Just one minute. If the method which you, as a Member of Congress, have pointed out to us is not the correct method, it is up to you to correct it and not us. We want to administer the law just as it is on the statute books, but we do not propose to repeal any law of Congress by any judicial decision.

Mr. GRAHAM. I quite agree with you that it ought to be that way, but they will not hearken to me over there in what I say as to what they should do.

Mr. PIERCE. Let me state this in addition to my answer: I, speaking for myself, want those cases to be decided exactly according to the law and the facts, and I shall work, myself, to do it, and shall not rely upon my individual judgment, but get the assistance of everybody that I can call to my assistance to help me to determine what is right.

Mr. GRAHAM. But under the principles now in vogue in your department you have the right to depend absolutely on yourself and your own judgment, is that not true?

Mr. PIERCE. Theoretically it is true, but in practice it is never true.

Mr. GRAHAM. I said under the system in vogue you have the right, theoretically, or however you please to put it. Let us come back to the question that I asked you, if you please. Mr. Reporter, will you please read it.

(The reporter read the question as follows:)

Mr. GRAHAM. If one of your subordinates were assigned the Cunningham record for his consideration, and he found in it very material documents which were offered in evidence but had not been properly authenticated so that they could not be considered under the rules of evidence, it would be entirely for him to say whether he would throw them out and ignore them or recommend sending the case back to have it properly proved.

Mr. PIERCE. Such a man, if he did that, would report to me, and I would so take the views of another man on the question. Mr. Graham, what I want to convey is that no technicalities of any kind will be permitted to control the decision in the case.

Mr. GRAHAM. But how can you make a subordinate report to you when the whole matter is dependent upon his judgment and you do not know the facts which he took into consideration unless you go through the records; which you can not do.

Mr. PIERCE. I expect to go through the Cunningham record. Because so far as the Cunningham cases are concerned my attention

has been specifically directed to them and I shall go through them with the greatest amount of care.

Mr. GRAHAM. You have heard of them then before?

Mr. PIERCE. I shall devote extraordinary care to them, Mr. Graham.

Mr. GRAHAM. To go back to the system; if you got sick and were unable to do it and were succeeded by some one less conscientious or painstaking than yourself, what I have said might still be true?

Mr. PIERCE. Is that a question or a remark?

Mr. GRAHAM. It is both a question and a remark.

Mr. PIERCE. I can not answer that.

Mr. GRAHAM. You mean by that that I am right in my assumption, do you not?

Mr. PIERCE. I would like to have the stenographer read your question.

(The stenographer read the question as follows:)

Mr. GRAHAM. To go back to the system; if you got sick and were unable to do it and were succeeded by some one less conscientious or painstaking than yourself, what I have said might still be true.

Mr. PIERCE. I will leave my successor to answer that question.

Senator ROOT. That might be a ground of exemption.

Mr. GRAHAM. That is not the ground of exemption. He has nothing to do with his successor's liberty.

The VICE-CHAIRMAN. Are there any more questions?

Mr. GRAHAM. Did you answer my question; I did not catch the answer? The Senator deprived me of the opportunity of hearing the answer.

The CHAIRMAN. The stenographer will read the answer.

(The stenographer read Mr. Pierce's answer, as follows:)

Mr. PIERCE. I will leave my successor to answer that question.

Mr. GRAHAM. That is the best answer you can make?

Mr. PIERCE. I want to answer you, Mr. Graham, squarely, but you ask what he would do.

Mr. GRAHAM. If you want to answer me squarely, you are not carrying out your intentions.

Mr. PIERCE. Well, I want to.

Mr. JAMES. You have told the committee, Mr. Pierce, that before these Cunningham claims were finally touched upon you intended to examine the record yourself thoroughly and have every lawyer in your department—I believe you said there were 30 of them there—and then have it passed up to the Attorney-General and have them further to look into it before it was passed upon. Why do you do that; on account of the magnitude of the claims or on account of the public attention that has been attracted to it?

Mr. PIERCE. Both.

Mr. JAMES. Can you tell the committee how many gentlemen passed upon these Cunningham claims before they were ordered to patent?

Mr. PIERCE. Yes. Just the register and receiver; that is all.

Mr. JAMES. And they were ordered to patent, then, without the investigation you now promise to give to them?

Mr. PIERCE. They issued the receiver's receipts; of course that does not mean they were ordered to patent.

Mr. JAMES. Before they were clear listed, then?

Mr. PIERCE. Well, when you get into the domain of clear listing, that is a matter that I do not know anything about.

Mr. DENBY. That is not in your department?

Mr. PIERCE. You were speaking about—

Mr. JAMES. They have to be clear listed before the patents can issue, do they not?

Mr. PIERCE. You mean that will be the judgment, the clear listing?

Mr. JAMES. Certainly.

Mr. PIERCE. What is your question?

Mr. JAMES. My question was: Before these patents were ordered clear listed—that is, these claims were ordered clear listed—how many had passed upon the validity of it?

Mr. PIERCE. What; passed upon it?

Mr. JAMES. Yes.

Mr. PIERCE. When the department once ordered it clear listed, that is a matter, Mr. James, that I can not answer. I did not have anything to do with that.

Mr. MADISON. They were clear listed in the office of the General Land Office?

Mr. PIERCE. Yes, sir; in the General Land Office.

Mr. JAMES. And they would have gone absolutely to patent irrespective of any other department, with the evidence in the case, would they not?

Mr. PIERCE. They might.

Mr. JAMES. Not only they might, but would they not; because is it not true that when they were ordered clear listed that the question of their validity was settled and nothing except the technical questions of law could have affected their finality?

Mr. PIERCE. Mr. James, I want to say I do not know anything about that feature of it. I do not know anything about those cases. I told Governor Moore that he could not have his patents.

Mr. JAMES. I know that you told Governor Moore; but as a matter of fact this record shows that these Cunningham claims were ordered clear listed—that is, the patents were ordered to issue to the claimants—and what I am trying to find out is how many had been passed by his office that were not at that time in your department, and I ask you that because you told the committee that you intended to do it.

Mr. PIERCE. Mr. James, those claims had not reached our department for attention. They are in the General Land Office, and as to just what machinery they put in motion I can not say.

Mr. JAMES. When they do reach your department, so the Secretary of the Interior has ordered them to patent—that is, clear listed, and they are ordered out of that division to the division where the patents issue—has your department anything to do with that division?

Mr. PIERCE. Supervisory control of it.

Mr. JAMES. In what way?

Mr. PIERCE. We have the general direction of everything that is committed to the Interior Department.

Mr. JAMES. You can not go back though and say that the order of the Secretary of the Interior was wrong and there is fraud there?

Mr. DENBY. The Secretary of the Interior had not clear listed.

Mr. PIERCE. The Commissioner of the General Land Office does that.

Mr. JAMES. In this case the question was passed up to you as Acting Secretary of the Interior?

Mr. PIERCE. No; it was not that at all.

Mr. VERTREES. Mr. James, you evidently have in view a different thing. You have in mind the clear listing in 1907, and the witness is speaking entirely of the matter before him now.

Mr. PIERCE. I was not here then; at least I did not know anything about that.

Mr. JAMES. You were not in the department at that time?

Mr. PIERCE. I came in the 1st day of November, 1907, in the department. I did not know anything about those cases until May, 1909. I do not know what they have done except what I have gathered from the examination of the papers, but the minute that my attention was called to these cases specifically was when Governor Moore came down and I said you can not have any patents.

Mr. JAMES. The Commissioner of the General Land Office is Mr. Dennett. Suppose Mr. Dennett decides that the patents ought to issue and he makes an order to that effect, then what has your department to do with that question?

Mr. PIERCE. We control it; we would not allow it to be done. We have general supervision over it, as I have stated, and a patent will not be issued in the Cunningham cases until the Department of the Interior examines the record.

Mr. JAMES. Is not this true that when the Department of Justice, of which your department is a branch, as I understand it—

Mr. PIERCE. Oh, no; we are not a branch of the Department of Justice.

Mr. JAMES. I understood that one of the attorneys, Mr. Lawler, was an attorney of the Department of Justice, was he not?

Mr. PIERCE. He is the only member of the Department of Justice that is in the Department of the Interior.

Mr. JAMES. Are not you gentlemen under him?

Mr. PIERCE. No, sir.

Mr. MADISON. He is the first assistant?

Mr. JAMES. Yes; he is the first assistant.

Mr. PIERCE. Mr. Lawler is the Assistant Attorney-General for the Interior Department; is a member of the department; is assigned to the Interior Department and occupies his office in the Interior Department for the convenience of the Interior Department.

Mr. JAMES. Well, he is with the Department of Justice, though?

Mr. PIERCE. Yes, sir; he is the only one in all our big force that is connected with the Department of Justice.

Mr. JAMES. In your capacity as Acting Secretary of the Interior you claim you will review these cases after they are passed upon by the Commissioner of the General Land Office?

Mr. PIERCE. No, sir; I do not, as Acting Secretary.

Mr. JAMES. How would you?

Mr. PIERCE. I review them as Assistant Secretary.

Mr. JAMES. And then it may still be appealed from your judgment on to the Secretary of the Interior finally?

Mr. PIERCE. No; the Interior Department consists of three secretaries; the Secretary of the Interior, the First Assistant Secretary of the Interior, and the Assistant Secretary of the Interior. The Secretary assigns and distributes the work around among the three Secre-

taries under the order that I have shown you. This work is distributed by the Secretary to the First Assistant Secretary, which he does as original work and closes it up finally.

Mr. JAMES. But you stated to the committee that by a special assignment you had charge as Acting Secretary of these Cunningham cases.

Mr. PIERCE. No; I did not intend to say that.

Mr. JAMES. Well, you did say so, did you not?

Mr. PIERCE. What I did say was that the Secretary turned them over to me to take charge of.

Mr. JAMES. You still look at it in the same light; that it is still turned over to you, do you not?

Mr. PIERCE. Yes; it is still turned over to me. I want to say, Mr. James—

Mr. JAMES. Now, do you say to the committee that the decision of an Assistant Secretary would not be subject to an appeal by a claimant to the Secretary himself?

Mr. PIERCE. Oh, they might take them to the Secretary, but it is settled.

Mr. JAMES. The point at which I want—

Mr. PIERCE. In determining that question, Mr. James, so far as the department is organized under the law, there would be—the position of the Secretary would be as chief justice, the First Assistant as associate justice, and the Assistant as associate justice.

Mr. JAMES. The point I want to get at is this: If an assistant—you stated a moment ago, and I do not think you intended to state it—that when an assistant decided that question that you could not appeal it to the Secretary.

Senator ROOT. Mr. Pierce, is not the action of the assistant the action of the Secretary, and a matter of law? There can not be any appeal any more than there can be an appeal to the Secretary to review his own action.

Mr. PIERCE. Yes, sir; that is right.

Mr. JAMES. But suppose the Secretary should pass upon a question and make up his judgment, and then a claimant thought the assistant had made an error, could not he go to the Secretary of the Interior proper and ask him to review that question?

Mr. PIERCE. They do that frequently, but the Secretary says: "Those are matters that are referred to the first assistant secretary, Mr. Pierce, and you must settle them with him."

Mr. JAMES. But still he would have the power, would he not?

Mr. PIERCE. Oh, well, I mean to say, that he does frequently go there and complain.

Mr. JAMES. Have you ever known, since you have been a member of the department there, that the decision which was arrived at by the assistant was reversed or revised by the Secretary of the Interior?

Mr. PIERCE. I do not now recall any, Mr. James; it might be, but I do not recall any.

Mr. JAMES. Has the Secretary ever been called upon, to your knowledge, to act in a case of that sort?

Mr. PIERCE. Frequently men have come in, and I have gone into his office and we have talked things over.

Mr. JAMES. But he would take it up in that way, would he?

Mr. PIERCE. But he does not—when I have acted upon it under the advice of our law force, and we have gone over the question carefully, the Secretary does not change the judgment of his assistant.

Mr. JAMES. I am not talking about whether he changes it, but the question I am asking is whether he could do it?

Mr. PIERCE. As to the possibilities of doing it, I think he could legally do it.

Mr. OLMSTED. Just the same as he could reverse his own ruling.

The VICE-CHAIRMAN. After you have promulgated your action, as assistant secretary, have you ever had it reviewed or changed by the Secretary?

Mr. PIERCE. No, sir; I have not.

Mr. JAMES. Wouldn't you make some distinction in a man overruling himself and overruling some fellow who had acted for him? Don't you think a man would be more likely to overrule the opinion of some inferior who had acted for him than to overrule something he himself had deliberated upon?

Senator ROOT. Don't you think he would be less likely to overrule the other man than to overrule himself?

Mr. JAMES. I am going according to human nature now, not according to the ideal the Senator would set up. Just take men as you find them.

Mr. PIERCE. I can not say, Mr. James. That depends upon the personal equation.

The VICE-CHAIRMAN. Are there any more questions, Mr. James?

Mr. GRAHAM. Gentlemen, I suggest that we have been adjourning too late at noon.

The VICE-CHAIRMAN. Do you move that we take a recess until 2 o'clock?

Mr. GRAHAM. I do.

(The motion was agreed to, and at 12.35 p. m. the committee took a recess until 2 o'clock p. m.)

AFTER RECESS.

The committee reassembled at 2 o'clock p. m.

TESTIMONY OF HON. FRANK PIERCE, ASSISTANT SECRETARY OF THE INTERIOR—Resumed.

The VICE-CHAIRMAN. Mr. Vertrees, you may proceed with the witness.

Mr. PIERCE. There is one statement I would like to make in answer to Senator Root's question of this morning, and that is this. That on account of the vast property interests involved in these Cunningham cases, especially because of the great notoriety that has been caused over the cases, I think it would relieve the department very much, indeed, if Congress would pass an act giving both the coal claimants—the Cunningham coal claimants and the Government—a right to appeal from the final judgment of the Secretary of the Interior to the court of appeals of the District of Columbia, giving that court the absolute right to review the cases on both questions of law and questions of fact. That would very greatly relieve the situation, in my judgment. And I suggest that, after thinking it over during the recess, as perhaps a reasonable and fair solution of the question.

Senator ROOT. Do you mean to limit that to those particular cases or a general provision which would be applicable to all similar cases?

Mr. PIERCE. My thought was to limit it to those particular cases, Senator Root; but as to whether it should be made broader or not, covering similar cases, or that that court should be given the right of appeal generally, that is a matter that I had not fully determined upon.

Mr. GRAHAM. It is quite apparent, is it not, that if the general right of appeal is given to the court of appeals of the District that court would be absolutely overwhelmed with work?

Mr. PIERCE. I can not answer that. But I understand that the court of appeals of the District is considerably crowded.

Senator SUTHERLAND. Mr. Pierce, have you given any thought to the proposition to create a land court?

Mr. PIERCE. Yes, sir; I have in the past.

Senator SUTHERLAND. Do you care to express an opinion on that?

Mr. PIERCE. My opinion before I came to the department was that that is the proper court, with perhaps limited powers, as the proper solution of the difficulty. We come back after all to Senator Root's question. Here we have a part of the Interior Department as prosecutors and a part as judges. If a court could be created—land courts—to determine these questions, many of these questions, it would certainly relieve the situation.

Senator SUTHERLAND. These courts could be confined to a very few of the States. I suppose nine-tenths of the land business, land litigation, arises in perhaps ten or twelve States.

Mr. PIERCE. I have not thought the question out as broadly as that, Senator Sutherland. My thought has been that possibly the land court should be a court of last resort, for instance, like the court of appeals in the District, from which judgment might be taken from the final action of the Interior Department. That is as broad as I had given it any thought, and that opinion is my own opinion I am now giving, my individual opinion. I do not know what the opinion of the department as a department would be.

The VICE-CHAIRMAN. Mr. Vertrees, will you please proceed with the witness?

Mr. VERTREES. Mr. Pierce, when you were called upon to express yourself and take some action with respect to what is known as the Roosevelt Dam, a certain question that arose between the Government and the contractors, I wish you would state to the committee what happened in this respect.

Mr. PIERCE. I find the testimony of Mr. Newell on pages 2016 to 2020 of the record in this case. The letter which I find, which was a reversal of the judgment of the Director of the Reclamation Service, is to be found on pages 2018 and 2019 of the record. The facts are substantially these. In the first place I want to say as to the work of the Reclamation Service, I do not take care of it; that is a matter that is in the regular assignment of the work of the Secretary, and he gives it his personal attention, and unless the Secretary is away I do not have anything special to do with reclamation work. My letter is dated the 24th of June, 1909. As I recall it now, Mr. O'Rourke came here on the 23d of June, the day before, and had a conference with Mr. Finney and Mr. Newell upon the contract—the Roosevelt dam contract. At any rate, Mr. Finney came to my office after the con-

ference was had, and stated that they had concluded that Mr. O'Rourke's contention should be sustained, and that the position taken by the Director of the Reclamation Service should be overruled. I went over to the Secretary, after speaking to Mr. Finney, and asked him if that met with his judgment, and he said that the terms of the contract he had looked into, and that Mr. Finney or Mr. O'Rourke had called his attention to it, and he was satisfied that the legal construction of the contract placed upon it by Mr. Newell was incorrect; that the contract did not permit a suspension of the work unless the dam or any portion of the dam had not reached 150 feet in height.

Mr. Newell had suspended it because the average height was only 150 feet. He said that that was his view of it, and that was also my own view of the contract, that it did not mean an average of 150 feet but it meant 150 feet for any part of it, and they could not suspend it on any part of it unless it reached 150 feet, and he told me that the matter would be presented formally the next day by way of a letter, and the letter was presented which involved the question, and contained in the letter of June 24, 1909, which I adopted. We sent that letter over to the Director of the Reclamation Service, and he came down to see me the next day, probably, or the next day but one, and we had considerable conversation, Mr. Newell and myself, over this. Mr. Newell said that it seemed to him that it was purely an engineering question, and that the department, as an administrative department, should not undertake to overrule the judgment of the engineers in the field. We talked along that line. We had considerable conversation. I told Mr. Newell that inasmuch as the Secretary had given it his personal attention, I thought I had better submit the whole matter to the Secretary in the field, and inasmuch as the Secretary was at the Yellowstone Park, and Mr. Davis was there, that we had better submit it to them, and let them determine the question; but I did tell Mr. Newell also that if it was necessary to act, and it was purely a question of engineering skill and it would damage the dam or weaken the dam to permit the work to go on, that I would cancel that letter; but inasmuch as there was no immediate necessity, I concluded to tell him that we would send it to the field, and pursuant to that conversation, I sent a telegram to the Secretary that is already in the record, and also a letter submitting the whole question to the Secretary. That, so far as I know, is all there is to that, Mr. Vertrees.

Mr. VERTREES. What was the real reason for the desire of the Government to suspend work at that time on the Roosevelt dam?

Mr. PIERCE. I do not know personally. All that I do know is that it has been stated to me that the real reason was for lack of funds.

Mr. VERTREES. Mr. Pierce, I call your attention to the letter which appears on page 750 of the record, written May 27, 1909, by Mr. Ballinger, as Secretary, to Mr. Miles C. Moore, Walla Walla, Wash., in which Mr. Ballinger defends both you and Mr. Glavis from the criticisms of Governor Moore and states that he believes they are unwarranted. What was your first knowledge of that letter?

Mr. PIERCE. I did not know the existence of that letter until after the charges had been filed with the President—the Glavis charges had been filed with the President—and then my attention was called to it by a letter which the Secretary wrote from the West to me, I

think, in which he said in preparing the answers that there were such letters in his private files and that I should get them and examine them; something of that kind.

Mr. VERTREES. So that the Secretary did not acquaint you with the fact that he had written that letter?

Mr. PIERCE. I did not know it until that time; no, he did not.

Mr. VERTREES. Mr. Pierce, a question which I asked you before in another form I now desire to repeat in conclusion, and that is this: Whether Secretary Ballinger ever at any time, directly or indirectly, sought to control or influence your action or your decision in any way with respect to the Cunningham claims?

Mr. PIERCE. He did not.

Mr. VERTREES. You may examine Mr. Pierce.

Mr. BRANDEIS. Mr. Chairman, I do not desire to examine Mr. Pierce until after I have had the opportunity of examining Secretary Ballinger.

The VICE-CHAIRMAN. Mr. Pepper, do you wish to examine him?

Mr. VERTREES. I want to say right now that I shall object to this dilatory course of procedure. I shall insist that the examination shall proceed now. There is no good reason why it should not go on now just as well as any other time, and I think we had better have an understanding on that matter.

The VICE-CHAIRMAN. The committee will pass upon that point when Mr. Pierce is recalled for cross-examination, after Secretary Ballinger has testified.

Mr. VERTREES. Very well. Of course, I wish to be distinctly understood as objecting to that course of procedure, because what holds good with this witness will hold good with every one. It means then an interminable intermixing of the whole matter and a delay, and I would not like to be brought up with the proposition that he was cut off from any cross-examination. No good reason has been stated, and none can be, why this witness should not be examined now.

Senator SUTHERLAND. It seems to me that this request of Mr. Brandeis is a somewhat remarkable one. I see no reason why he should not cross-examine Mr. Pierce, and if anything develops during the examination of Mr. Ballinger that makes it necessary to recall him, that can be done, but I see no reason in the world why he should not proceed with the cross-examination now. I think, as one member of the committee, that he should do it.

Senator ROOT. Of course, there is no reason why Mr. Brandeis should cross-examine now unless he wants to. But, of course, if this witness leaves the stand, there would naturally have to be some reason given to bring him back again. Of course Mr. Brandeis would have to take his risk of being able to establish good cause for bringing the witness back. If he leaves without cross-examination now, he leaves without cross-examination.

Mr. VERTREES. Senator, that would be so, unless the statement is to be accepted and by implication acquiesced in, namely, that he does not now, because he wishes to hereafter. That is the point I wish settled.

Senator ROOT. It seems to me, Mr. Chairman, that the committee can not pass now on the question as to whether he can bring him back for cross-examination hereafter.

The VICE-CHAIRMAN. I think the committee will pass on that when it arises and Mr. Pierce is recalled for cross-examination.

Senator ROOT. And I think it should be understood that there is no implication whatever that this witness is to be brought back. Mr. Brandeis now has an opportunity for cross-examination.

Mr. OLMSTED. I understand that he requests that his cross-examination be deferred until after Mr. Ballinger has been examined.

Senator SUTHERLAND. He does not waive cross-examination, but he asks to defer the cross-examination, and as to that I, as one member of the committee, will object. If Mr. Brandeis wishes to waive cross-examination, that is another thing.

Mr. BRANDEIS. No; I decidedly do not desire to waive cross-examination. But Senator Sutherland has stated that I am making a very unusual request. I desire to call the attention of the committee to the fact that I have been put in a situation which is so unusual that I do not know its equal in the whole conduct of a judicial proceeding. I endeavored to call Secretary Ballinger, and I was denied the privilege which I should have in any court of justice. I then asked that, if I were denied that privilege and temporarily rested, as it was called, Mr. Ballinger should be called by the other side in order that I might then have an opportunity of examining him, and that application was denied. Now, I submit that, opportunity of examining Secretary Ballinger having been denied me, I ought not to be forced at the risk of losing all opportunity of cross-examining witnesses to develop in respect to all of the witnesses who surround Secretary Ballinger the questions which I wish to interrogate Secretary Ballinger in regard to. The main reason why I urge that I should have the right to examine Secretary Ballinger, or that he should be called by his own counsel in order that I might cross-examine him, was because I believed that the order of the examination, the time when he was examined, was a very material matter. Now, in all this, Mr. Chairman and gentlemen of the committee, my effort is to present this matter in such a way as best to elicit the truth for the benefit of the committee and those who are observing what the committee is doing. Now, in my judgment, that end will be best attained by deferring any examination of Mr. Pierce until I shall have examined Mr. Ballinger. That is my judgment, and necessarily I must exercise my judgment; and I do not think that that judgment should be exercised by me under circumstances that I must waive a right of freely examining this witness simply because I believed that is the method of examination which will best conduce to bringing out before this committee for the benefit of the country the truth in this investigation.

Mr. DENBY. Mr. Chairman, it seems to me that as this proceeding is wholly within the control of the committee, it rests with the committee whether we shall or shall not summon witnesses; in what order they shall be examined, if we choose to exercise that right, and in every way to conduct this investigation as the committee chooses to conduct it. It seems to me now that if we ask Mr. Brandeis if he cares to examine this witness and offer him the opportunity to do so, and he declines to do so, the witness is then excused, and whether or not he shall be resummoned shall rest entirely in the discretion of the committee later on; and I would suggest that that procedure be adopted, Mr. Brandeis be requested to state whether he wishes to

examine this witness now or not, and if he does not, that the witness be excused without conditions.

Senator PURCELL. It seems to me, Mr. Chairman, speaking for myself, that it is not an unusual request. I know of many instances in the trial of lawsuits where an attorney has stated that for good reasons he did not want to cross-examine a witness, and asked the privilege of doing so later on, and courts have freely granted that the purpose being to get at the truth. Now, for some purpose, perhaps a good one to himself, he asks that this cross-examination be deferred. No rights are lost, nobody is injured, and no time is lost and it seems to me that it is not out of the usual order.

Mr. GRAHAM. I would suggest, Mr. Chairman, that there is barely a quorum of the committee present. The question is one of such importance that it could well be postponed until there was a larger attendance or a full attendance of the committee, in the meantime holding this particular question in abeyance that some other witness may be called.

Senator ROOT. The question of whether Mr. Brandeis can recall Mr. Pierce for cross-examination is a question that must be determined when it is raised. It is not raised yet. There is not anything to be determined now, as far as I can see, except for Mr. Brandeis to determine whether he wishes to cross-examine now. If he does not the witness will have to be excused from the stand, and if Mr. Brandeis has any further application to make we can pass upon it then.

Mr. GRAHAM. There is this to be said on that question, Mr. Chairman, that Mr. Brandeis's action in the matter would probably be determined—I do not know but it might be determined by the action of the committee at this time—but if the committee would in some way indicate to him whether Mr. Denby's suggestion would be followed—that is, that if the witness was excused now it would be held that Mr. Brandeis has waived the cross-examination.

Mr. DENBY. I beg pardon. I did not say that, Mr. Graham. I said that if the witness was excused now he would be excused without conditions, which does not imply that Mr. Brandeis has waived anything.

Mr. GRAHAM. Very well, I am glad I mentioned it, because I misunderstood you. Then you agree with Senator Root about it that this question will come up later when he asks to cross-examine the witness, leaving him keeping company with Mahomet's coffin in midair. He would not know where he was at.

Mr. VERTREES. Mr. Chairman, I would like to be indulged one moment, to say that of course the shallowness of this pretense is apparent to every member of the committee and to everybody else. If this committee says to Mr. Brandeis that he has got to cross-examine the witness, he will proceed and do it, and it is equally obvious to everyone that he can do it; that this witness has said something which requires in any way the postponement of his cross-examination until Mr. Ballinger shall be examined. The only part that he has mentioned with regard to Mr. Ballinger was that he received certain instructions, and that Mr. Ballinger had never had anything to do with the matter since that time—a very simple matter that does not involve any conduct of the two in its statement.

Now, we have dragged along for weeks and weeks in this investigation, and practically no limit has been put heretofore upon the method

and manner of the cross-examination. They have proceeded without regard to rules, and it seems to me that the time has come when a rule—in regard to which I must differ with the Senator, and say that it is extraordinary—should not be applied; that it is not usual even in courts of justice; that it is very exceptional; that it is one of those exceptional things that is allowed if a good reason is given why a witness should not be cross-examined. Now when he has been put upon the stand, according to the rules in courts of justice, which are much more rigid than we have employed here, upon a good showing it is allowed, but it is exceptional, and it is very rare. In this investigation I think the witnesses are the witnesses of the committee. It seems to me that not only will the business be expedited and justice be done by proceeding in the way we have proceeded to examine the witness and then reexamine him, but that it is far preferable to another course which I say is apparently and palpably nothing but a pretense.

Senator PURCELL. My experience has been, Mr. Chairman, that courts and investigating committees generally leave to counsel on the respective sides the manner, or the decision of the manner, in which they shall present their cases. I have known many instances where an attorney has stated to the court that he desired to examine a witness later on, without assigning any reason or cause therefor, and he has been permitted to do it.

Mr. VERTREES. It is exceptional, Senator.

Mr. GRAHAM. Let me suggest to Mr. Vertrees, Mr. Chairman, the fact that in addition to what Mr. Pierce has testified to in answer to his inquiries, there is a statement in Senate Document 248 covering more than 40 pages, prepared by Mr. Pierce, which is in evidence here. If I were conducting the cross-examination I would unquestionably include that as subject-matter for cross-examination.

Mr. VERTREES. Then the answer is that he has had that before him for two months, and should know how to cross-examine him upon it—

Mr. GRAHAM. I had not finished.

Mr. VERTREES. I beg your pardon.

Mr. GRAHAM. That is all right. I think it is also true that in the statement over Mr. Pierce's name in the Senate document there is a great deal of matter about which he would be cross-examined which would also be involved in any cross-examination of Mr. Ballinger; and while I do not know the thought in Mr. Brandeis's mind, I, of course, have my own opinion as to what it is; and I can see why on Mr. Ballinger's part, and to forestall adverse argument and inference later on, that Mr. Brandeis's suggestion ought to be adopted by the committee, because I can see very clearly, I think, how it might be argued with very much force that by developing these facts in advance through the cross-examination of subordinate officers of Mr. Ballinger he was fortifying himself and taking the sting out of the cross-examination of himself in advance; and it seems to me, even in his inquiry, and to prevent the laying of the foundation for such an argument, that from his view point it would be better to accede to the request made by counsel.

The VICE-CHAIRMAN. Mr. Graham suggests that the matter be decided when we have a full committee. It seems to me that that

would be in accordance with the suggestion made by Senator Root—that is, that we will decide hereafter whether Mr. Brandeis has put any limitation upon his rights to follow with the cross-examination of this witness hereafter. Without deciding one way or the other, it seems to me that Mr. Vertrees might call one more witness.

Mr. VERTREES. Of course I am here to obey the pleasure of the committee. I wish to say now that my suggestion is that this witness be discharged.

Senator ROOT. Mr. Chairman, I think it is but fair for me to say that I shall not vote to have this witness recalled for further examination unless some good reason is given for it. I have been practicing law for many years and never knew any case where counsel was not required to go on with his cross-examination, provided the counsel that put the witness on the stand objected, unless there was some specific reason for doing it, and I see no reason why we should not follow the ordinary course here. If there is any good reason given hereafter for recalling this witness for cross-examination, I shall be quite content to vote to have him recalled; otherwise, I shall not.

Mr. BRANDEIS. Senator Root, is it not a sufficient reason that you have in this instance departed from the general rule by which I should have had the liberty to call Secretary Ballinger and examine him when I pleased?

Senator ROOT. There is no such rule, and we have not departed from the general rule. You are the only one who is endeavoring to secure a departure from the ordinary course of procedure.

Mr. BRANDEIS. With all deference, that certainly is the rule in every court, except in a criminal case.

Mr. OLMSTED. Mr. Brandeis, there is no case pending here. Neither you nor Mr. Vertrees, in my judgment, has any right to dictate the order in which the witnesses shall be called. That is entirely with the committee. The committee has decided that it will not call Mr. Ballinger at the present time. That is all there is to that.

Mr. BRANDEIS. I assent absolutely to every word you say. We have no rights here—I mean rights in the way you have stated the rule, as I understand it.

Mr. OLMSTED. It is not a case where there is an issue joined.

Mr. BRANDEIS. You have stated the rule, as I understand it, with legal accuracy; that is, that our right is absolutely dependent, as to the manner of either examining or cross-examining, upon the action of the committee. I should have no right, I suppose, in a strict sense, to cross-examine the witnesses if the committee came to the conclusion that I should not, because I do not suppose that the language is so specific that the committee could not control the method of proceeding; but I simply stated, when I endeavored to answer Senator Root in regard to a reason, the usual rule, as it seemed to me. We have not the usual case to deal with, because, if we take the ordinary proceedings in a court of justice, if that were the rule, then I have been denied the right which every litigant would have. Now having passed from that—

Mr. OLMSTED. You would not then have the right—assuming now that Mr. Ballinger was testifying—you would not have the right to call him unless you would be bound by his answers.

Mr. BRANDEIS. I beg your pardon. I can call anyone, as I understand it, in a court of justice, and I am not bound by anybody's

answers. The only rule that I understand to be the rule that prevails in court generally, is that if a witness is unexpectedly hostile, unless he surprises me, I can not ask him generally as a witness—

Mr. GRAHAM. You can not impeach him.

Mr. BRANDEIS. I can not impeach him, but I am not bound by any answer that he makes; and what is more, according to all the practice that I am familiar with, in such courts as I have had the opportunity of practicing, I should have the fullest right of leading that witness; that is, I would have the same right in examining a hostile witness that I would have in cross-examination. There is no difference whatever in any practice with which I am familiar, between cross-examination, and an examination where you call a defendant.

Senator SUTHERLAND. You would not be bound by his answers, but you could not impeach him either by evidence, or you could not impeach his general credit by evidence, either by evidence or otherwise.

Mr. BRANDEIS. I could not put a witness on the stand to testify to his reputation for truth and veracity, but I certainly could—

Senator SUTHERLAND. I say you could not impeach his general credit by argument or evidence.

Mr. BRANDEIS. I think I could do that in every court that I know anything about. Still, I only instance that as indicating what Mr. Olmsted's own statement indicates, that this is an unusual proceeding, and being unusual I have asked the privilege of deferring such examination as I may have to make of Mr. Pierce until after Secretary Ballinger has testified, and I can not give a more specific reason than I have. I have indicated very clearly what that reason is.

Mr. MADISON. What is it? I have just come into the room and did not hear it.

Mr. BRANDEIS. The real reason is this: Mr. Pierce is a witness to a part of the case that Mr. Ballinger himself will testify to. I believe that the truth can be developed best in this case by cross-examining Mr. Ballinger himself—cross-examining him on this point first. The cross-examination may make it unnecessary to examine Mr. Pierce at all—I mean on this point.

Senator SUTHERLAND. Will that apply to other witnesses as well?

Mr. BRANDEIS. Yes; not all of the other witnesses, but some.

Senator SUTHERLAND. A number of other witnesses?

Mr. BRANDEIS. Yes, sir.

Senator SUTHERLAND. So that the result would be that we would be halted in the work of the examination with a number of witnesses that you can set aside until Mr. Ballinger can testify, and then you would call them back one after the other.

Mr. BRANDEIS. That may or may not be. It will depend upon the examination of Mr. Ballinger. It may be a very great saving of the time of the committee, because the examination of Mr. Ballinger may render it unnecessary to recall these witnesses. All I ask is that I should not have applied to me any rule which cuts me off, because I, in the exercise of such judgment as I have, conclude that that is the best way of eliciting the truth, which I am here to do.

Mr. DENBY. Mr. Chairman, I suggest that counsel be asked whether he wishes to examine the witness now or not.

¶ Senator PURCELL. To bring the matter up, I move that the matter be deferred until there is a full committee present; and I want to add to that that in the meantime we ought not to deprive him from cross-examination.

The VICE-CHAIRMAN. That is if the full committee decides that if he does not proceed with the cross-examination now, he shall have the opportunity later.

Mr. DENBY. Do I understand, Senator Purcell, that in case we pass this now we shall not deprive Mr. Brandeis, under any circumstances, of the right to cross-examine?

Senator PURCELL. Yes.

Mr. DENBY. That is exactly what he is asking for.

Senator PURCELL. No; because he says that perhaps Mr. Ballinger will not be called. His request is to hold the cross-examination in abeyance until after Mr. Ballinger has been examined. Now, there will be a full committee here probably before Mr. Ballinger is called, and we can determine this matter then, and when we do determine it, if we determine it against Mr. Brandeis, we will ask him to proceed with the cross-examination.

The VICE-CHAIRMAN. The question is on the motion of Senator Purcell, that the matter be deferred until we have a full attendance of the committee and then decide it.

Mr. DENBY. Suppose we say until to-morrow morning?

Senator PURCELL. Yes; there will be a full committee then, I have no doubt.

The motion was agreed to.

The VICE-CHAIRMAN. Mr. Vertrees, will you please call the next witness?

TESTIMONY OF FRANCIS W. CLEMENTS.

Francis W. Clements, having been first duly sworn by the vice-chairman, testified as follows:

Mr. VERTREES. Please state your full name.

Mr. CLEMENTS. Francis W. Clements.

Mr. VERTREES. What is your age?

Mr. CLEMENTS. I am 46 years of age.

Mr. VERTREES. Where do you live?

Mr. CLEMENTS. In the District of Columbia.

Mr. VERTREES. What is your connection with the Government, if you have any?

Mr. CLEMENTS. I am first assistant attorney of the Interior Department.

Mr. VERTREES. How long have you occupied that position, Mr. Clements?

Mr. CLEMENTS. That particular position I have occupied since March, 1907.

Mr. VERTREES. Prior to that what position did you occupy?

Mr. CLEMENTS. I was assistant attorney in the office of the Assistant Attorney-General.

Mr. VERTREES. How long have you been in the Interior Department?

Mr. CLEMENTS. Thirty-one years.

Mr. VERTREES. Are you acquainted with Mr. L. R. Glavis?

Mr. CLEMENTS. I have met the gentleman once.

Mr. VERTREES. Not more than once?

Mr. CLEMENTS. Well, I think there were two occasions.

Mr. GRAHAM. Surely he has not understood your question as to the length of time he has been in the Interior Department.

Mr. CLEMENTS. That is correct; yes, sir.

Mr. GRAHAM. You are 36 years of age and have been thirty-one years in the Interior Department?

Mr. CLEMENTS. I stated that my age was 46.

Mr. GRAHAM. I beg your pardon.

Mr. VERTREES. Did you have occasion at any time in your official capacity to consider the Alaska coal law known as the act of May 28, 1908, for the purpose of giving it a construction?

Mr. CLEMENTS. Well, I may have had a number of cases where I construed the coal-land law of Alaska.

Mr. VERTREES. Did you especially, at any time, have occasion to consider that in connection with Mr. Finney or Mr. Pierce?

Mr. CLEMENTS. I think perhaps you refer to the matter in which Mr. Glavis was connected. That particular matter I had occasion to consider and construe—the coal-land law of Alaska.

Mr. VERTREES. When was that, Mr. Clements?

Mr. CLEMENTS. That was in May, 1909.

Mr. VERTREES. State first to the committee how it came to you—how it reached you.

Mr. CLEMENTS. It came to me in the regular order of work. At that time, in the absence of the Assistant Attorney-General, Mr. Lawler, I was the Acting Assistant Attorney-General for the department.

Mr. VERTREES. Mr. Lawler was absent at that time, was he?

Mr. CLEMENTS. He was absent in California incident to closing up some of the affairs, I think, in connection with his previous office, that of United States attorney for the southern district of California.

Mr. VERTREES. Now, begin at the beginning and tell the committee just what you did with reference to that matter and just what you know about it.

Mr. CLEMENTS. The particular matter in question, if I identify it, and I think I do, was a letter submitted by the Commissioner of the General Land Office, unsigned, for the signature of the Secretary of the Interior in the form of a letter addressed to the Attorney-General, requesting his opinion upon certain stated inquiries having relation to the coal-land laws of 1908. That paper came to my desk, as all matters having any legal questions involved, conducted, or arising in the Interior Department at that time came. As it came to my desk it had a memorandum on it, as I recall, by Mr. Finney, who was assistant to the Secretary. The paper was a very short paper, in no form to submit to the Attorney-General. Looking it over, I found it would be practically impossible to answer the queries seriatim, and was in doubt as to what was really desired. I went to the Land Office to find out the cause for the inquiry and to consult with whomever had been engaged in its preparation. It was in that connection that I was told that Mr. Glavis had prepared the letter submitting the question. Up to this time I had never met Mr. Glavis and did not know who he was. I asked if he was in town. They said that he was, and I asked if he could be reached and if they would send him to my office? It was not long before he came, and I sent

for Mr. Finney. I considered the matter and it did not seem to me to be a matter to submit to the Attorney-General, and did not seem to be a question about which, as I understood it, that there was much doubt. I took the matter up carefully with Mr. Glavis in the presence of Mr. Finney and a stenographer. I explained to Mr. Glavis the difficulties I had in his queries as submitted, and asked him what he was really after; what was troubling him; what the matter was that he had in hand?

Mr. VERTREES. If you will allow me to interrupt you; you said you went to the land office and inquired for him. Did you find him over there?

Mr. CLEMENTS. I did not. I thought you wanted me to tell my whole connection with it without interruption.

Mr. VERTREES. I did, but I thought you had omitted to state that you had left word for him and that he then came to your office.

Mr. CLEMENTS. I think I stated that I left word for him and he came.

Mr. VERTREES. Pardon me; go on. I should not have interrupted you.

Mr. CLEMENTS. As I said, I talked the matter over fully with Mr. Glavis, and, after hearing all that he had to say, I dictated to the stenographer a form of instruction, believing that the matter was one similar to many which I handled every day, and if I am not much mistaken I gave Mr. Glavis, after the stenographer returned with it, a copy of what I had dictated, so that he might have opportunity to look it over, and suggest any matter further before I let it go; that thereafter I finished the paper that was signed by Mr. Pierce on, I think, the 29th—is it? or some day in May; I do not recall the date.

Mr. VERTREES. The 19th, I think.

Mr. CLEMENTS. Some day in May, 1909. After I had prepared the paper I passed it along, as is usual in the course of the dispatch of business of this character, to the assistant secretary, and after talking the matter over with him and Mr. Finney, he approved the paper as submitted, and it was signed.

Mr. VERTREES. I am not clear as to whether you stated where you found the paper in the first instance—the statement that it was desired to take the opinion on—whether it was on your table or Mr. Finney brought it in. Do you recollect how that was?

Mr. CLEMENTS. I am not sure whether Mr. Finney brought it in, or whether I found it in the pigeon hole on my desk which I had assigned for new matters of that sort. I am not able to say.

Mr. VERTREES. Can you say whether you discussed it with Mr. Finney before you called in Mr. Glavis or not?

Mr. CLEMENTS. It is my impression that I did not, but I would not be sure.

Mr. VERTREES. But when Mr. Glavis came Mr. Finney was present then?

Mr. CLEMENTS. I think when Mr. Glavis came to my room I sent for Mr. Finney.

Mr. VERTREES. And brought him in?

Mr. CLEMENTS. And he came in.

Mr. VERTREES. So that the conversation then was with you three?

Mr. CLEMENTS. Yes, sir.

Mr. VERTREES. Now, did Mr. Glavis make any statement as to his expectation that that matter would be considered by the Attorney-General and not by you or the attorneys for the department?

Mr. CLEMENTS. Not at all. There was no suggestion that he expected it to be considered normally; as he submitted it with the letter addressed to the Attorney-General I would naturally suppose that he thought it was going there.

Mr. VERTREES. Did he say anything about it in any way?

Mr. CLEMENTS. He raised no serious objections or suggested in any way.

Mr. VERTREES. You say he raised no serious objection?

Mr. CLEMENTS. I mean he raised no question about my right to consider the matter.

Mr. VERTREES. That is what I am trying to get at, Mr. Clements.

Mr. CLEMENTS. Well, I did not fully understand your question.

Mr. VERTREES. Did he say anything about any promise on the part of the Secretary or an agreement with the Secretary that you should not do it, or that it should go to the Attorney-General?

Mr. CLEMENTS. There was no reference to any matter that had ever been considered by him with the Secretary relative to this matter at all.

Mr. VERTREES. Did you at that time know that he and the Secretary and Mr. Dennett and Mr. Schwartz had had any conversation on the subject?

Mr. CLEMENTS. I did not.

Mr. VERTREES. And he made no statement to you or to Mr. Finney, in your presence, that there was any such understanding or agreement?

Mr. CLEMENTS. He did not give any intimation of any such a thing.

Mr. VERTREES. Was anything said in that conversation about the Cunningham cases in any way?

Mr. CLEMENTS. It is my recollection that when I asked him about what he had in hand, the real matters that were troubling him, he made reference to the Cunningham cases. That is my best recollection in respect to that. I said to him that I was not deciding cases, that I was construing the statutes, and I would like to say here freely that up to this time I had no thought, idea, or knowledge as to what the Cunningham claims were. It would have been just the same if he had said Smith or Jones to me, I mean so far as such names would have imparted knowledge of any particular claims to me.

Mr. VERTREES. Well, in reply to his statement, what did you say, if anything?

Mr. CLEMENTS. Why, I explained to him that I was not deciding cases except necessarily as the construction of a statute must have relation to the disposition of a case and its administration; that I was not attempting to pass upon the cases at this time, because I would naturally be ignorant of the circumstances and facts connected with any given case. I was particularly cautious, however, to say this to Mr. Glavis: As I understood these questions they related solely to arrangements made, having as their object the convenient operation and development of the claims; that they bore no indication or suggestion that the claim was not in itself initiated in good faith; that by the very terms of the act the location of the claims must have been in good faith, and that I wanted to impress upon him, and I could not impress it too strongly, that I did not understand

that any question was submitted affecting a claim initiated by or in the interest or for the benefit of another, nor that there was any question involving the use of another's name as a dummy or otherwise submitted, and with respect to that I wanted him to understand that it was not my purpose to pass and that those instructions did not pass thereon. That was clearly, as I say, particularly sought to be impressed upon him.

Mr. VERTREES. What statements, if any, did he make in respect to that that you recall?

Mr. CLEMENTS. I do not recall that he made any at all.

Mr. VERTREES. I here show you the document which appears on page 207 of Senate Document 248, which is dated Washington, May, 1909, addressed to the Attorney-General, blank for the signature of the Secretary, and underneath of the name of the Secretary being the letters "F. D.," and ask you if that is the statement to which you referred as the one submitted for your opinion?

Mr. CLEMENTS. That seems to be. It was of that general character, and I assume that this is an exact copy of the paper that was submitted. Of course I could not answer as to that without a chance to examine the original and compare it.

Mr. VERTREES. Mr. Chairman, there has been one printed in the record, but by inadvertence it leaves but one of the propositions submitted, proposition number 3, printed at page 228 of volume 1.

The VICE-CHAIRMAN. Of the testimony?

Mr. VERTREES. Yes, sir; I think the corrected one should be printed if it has not been.

The VICE-CHAIRMAN. That is, you would have the whole document reprinted?

Mr. VERTREES. Yes, sir.

The VICE-CHAIRMAN. That may be done.

(The document is as follows:)

DEPARTMENT OF THE INTERIOR.

Washington, May —, 1909.

The ATTORNEY-GENERAL.

SIR: Under date of May 28, 1908, Congress passed an act entitled "An act to encourage development of coal deposits in the Territory of Alaska."

At the date of the passage of this act there were pending in the various land offices in Alaska unperfected coal entries in which payment had not been made and cash certificate had not issued. These entries were made by persons qualified to make entry under the general coal-land laws. In a great many cases entrymen had under varying circumstances contemplated making, contracted to make, or had actually made transfers of the entries, or agreements to transfer these entries, to companies or corporations. The general proposition sought to be effected by these transfers was to consolidate the entries into groups in order to secure such acreage as would warrant the mining of coal upon an extensive and permanent basis. Application is now being made from time to time that certain of the entries above referred to and pending on May 28, 1908, be now accepted, cash price received, and entries permitted to go to patent under the terms of this act.

This department would be pleased for your official opinion as to whether those entries may be completed and patent issued in cases wherein the law has been complied with, except for some one of the following irregular or illegal agreements or conditions pending May 28, 1908:

1. A verbal or written agreement between two or more entrymen, made prior to the initiation of the entry, that upon payment for the land and issuance of a cash certificate the entries should be transferred to a single company or corporation, and the different entrymen to accept stock in said corporations in payment for the land.

2. A contract conveying said lands to a company or corporation in which the entryman had or expected to receive stock in payment for the lands.

3. Entries made under an agreement to convey, and conveyance made to a company or corporation, which company or corporation now offers to make cash entry under the act of March 28, 1908, by consolidating the said claims or locations so made.

4. A verbal agreement by two or more entrymen, made prior to the initiation of the entry, that upon issuance of patent the entries would be consolidated and mined at the joint expense of each claimant, share and share alike.

Respectfully,

Secretary.

Mr. VERTREES. I here show you the same document, Senate Document 248, and call your attention to the memorandum which appears on page 712, signed "Finney," and ask you if you recognize that as the memorandum that accompanied the statement which you say came into your office as stated?

Mr. CLEMENTS. That seems to be the memorandum, but of course I can not say that it was.

Mr. VERTREES. That has never been printed or read, I do not think. Would the committee like to hear it or wish it printed? I will ask that it be printed, Mr. Chairman.

The VICE-CHAIRMAN. That may be printed.

(The document offered appears at page 237 of the record.)

Mr. VERTREES. I here show you the document which is printed on page 228 of the record, volume 1, dated May 19, 1909, signed "Frank Pierce, First Assistant Secretary," and ask you to state whether or not that is the memorandum or rather the opinion which you drew up for Mr. Pierce to sign.

Mr. CLEMENTS. I notice a typographical mistake here. I do not know how many more there are. But it appears to be the same. This 2,060 evidently means 2,560.

Mr. VERTREES. Was that prepared as the result of the consideration of the matter by you and Mr. Finney or by you alone?

Mr. CLEMENTS. That paper I dictated, I think.

Mr. VERTREES. Did you and Mr. Finney go to Mr. Pierce with that together?

Mr. CLEMENTS. I do not know whether I went then to Mr. Pierce with it or whether it was sent in the regular order and Mr. Pierce sent for me, as is usual in many instances. I do recall that I took the matter up with Mr. Pierce and after his consideration of the matter he was so well satisfied that he signed the paper.

Senator SUTHERLAND. Mr. Vertrees, did you say the memorandum signed by Mr. Finney was not in the record?

Mr. VERTREES. I so understood.

Senator SUTHERLAND. You will find it at page 237 of the record.

Mr. VERTREES. Then it will not be necessary to print it?

The VICE-CHAIRMAN. No; then it will not be necessary to reprint it.

Mr. VERTREES. You can leave it out; I was informed that it had not been printed. What then became of the statement and the opinion after you delivered them to Mr. Pierce and he signed them?

Mr. CLEMENTS. I suppose they followed the usual course and went to the Commissioner of the General Land Office.

Mr. VERTREES. And did not come back to you?

Mr. CLEMENTS. No, sir; it was not usual to send such matters back.

Mr. VERTREES. Did Mr. Ballinger in any way discuss the question with you or have anything to do with the shaping of your opinion?

Mr. CLEMENTS. Not at all. I never had a word of conversation with Mr. Ballinger about it.

Mr. VERTREES. At any time?

Mr. CLEMENTS. At any time.

Mr. VERTREES. And as I have understood you already to say you had no knowledge of any conversation between Mr. Ballinger and Mr. Glavis and others as to taking the opinion of the Attorney-General instead of yourself?

Mr. CLEMENTS. I was in entire ignorance of any such arrangement. If it had been previously or subsequently made I knew nothing about it.

Mr. VERTREES. Was there anything else in connection with this matter in any way that you know that you wish to state?

Mr. CLEMENTS. Nothing that I know of.

Mr. VERTREES. You may examine Mr. Clements, Mr. Brandeis.

Mr. BRANDEIS. As this examination relates quite largely to conversation with Mr. Glavis, and as Mr. Glavis was obliged to go West and is now in Oregon, I should like to be able to either await his return or have an opportunity of sending Mr. Clements's testimony to him to get his suggestions before examining him further.

Senator ROOT. That is a reasonable request, and I move that it be granted.

The VICE-CHAIRMAN. Does anyone else wish to ask the witness any questions?

Mr. PEPPER. I do not, sir.

Mr. VERTREES. I wish to say with respect to that reason that that is a reason that will hold everything if Mr. Glavis is going to stay in the West or East or any other place.

Mr. BRANDEIS. That reason, of course, I could have given in respect to Mr. Pierce. While it was a reason, it was not the main reason, and therefore I did not give it; but in the case of Mr. Clements, that is the reason.

Mr. VERTREES. I wish to be understood as insisting that this cross-examination should continue and that that is not a sufficient reason although a reason.

Senator ROOT. It will not take very long to send this testimony out to Mr. Glavis and get his instructions.

The VICE-CHAIRMAN. Then, without objection, the witness will be excused and Mr. Brandeis will have the right to recall him for cross-examination.

(Whereupon Mr. Clements was temporarily excused.)

TESTIMONY OF MR. EDWARD C. FINNEY.

Mr. Edward C. Finney, having been first duly sworn by the vice-chairman, testified as follows:

Mr. VERTREES. Please state your name to the committee?

Mr. FINNEY. Edward C. Finney.

Mr. VERTREES. What is your age, Mr. Finney?

Mr. FINNEY. Forty years.

Mr. VERTREES. Where do you live?

Mr. FINNEY. My legal residence is Lawrence, Kans.

Mr. VERTREES. Are you in the government service?

Mr. FINNEY. I am.

Mr. VERTREES. What is your position?

Mr. FINNEY. I am assistant to the Secretary of the Interior.

Mr. VERTREES. How long have you held that position?

Mr. FINNEY. Since the first part of May, 1909.

Mr. VERTREES. What are your general duties as such assistant?

Mr. FINNEY. They are rather miscellaneous. I exercise a supervisory authority over the mineral section of the law force of the Secretary's office and review opinions prepared there, and am called upon occasionally by the Secretary and the First Assistant and the assistant secretaries to advise them as to legal matters and occasionally as to administrative matters. I answer some correspondence that comes to the department. I prepare some reports on bills which come down from Congress. I assist in drafting regulations occasionally and general miscellaneous work; making myself useful.

Mr. VERTREES. How long have you been in the government service in the Interior Department and in what capacities—just state from the beginning?

Mr. FINNEY. I entered the service of the Interior September 1, 1894, as a clerk in the mineral division of the General Land Office, served as an examiner of claims in contests in that division for eleven years, and was appointed as a member of the board of law review in the General Land Office by Commissioner Richards in 1905 and served in that capacity until April or May, 1909, when I was appointed to my present position.

Mr. VERTREES. Do you know the cases called the Cunningham cases or the Cunningham claims?

Mr. FINNEY. I do now.

Mr. VERTREES. Are you acquainted with Mr. L. R. Glavis?

Mr. FINNEY. I met Mr. Glavis several times during May, 1909. I do not recall having met him before, although I knew he was a member of our field force.

Mr. VERTREES. Before proceeding to consider those claims especially, I wish you would state to the committee the course of a claim, a mineral-land claim or a coal-land claim, in the Land Office?

Mr. FINNEY. After it reaches the Land Office?

Mr. VERTREES. Yes; after it reaches the Land Office; and the different divisions.

Mr. FINNEY. Ordinarily, after final certificate and receipt have been issued by the register and receiver, the case is transmitted to the General Land Office, and if it is a coal or a mineral case, goes direct to what is known as the "mineral division," Division N. It is taken up there for examination in the regular order, and if found regular in all respects, no protests or objections, it is passed from Division N to Division B for the writing of patent. If, however, any charge has been filed against the claim which requires investigation, or if the claim is one of that numerous class which is involved in the general order of suspension requiring a field examination, the cases are held up awaiting examination and report by special agent, and the cases are not passed to patent until after they have been O. K.'ed or clear listed by the special-service division.

Mr. VERTREES. What was your first knowledge, Mr. Finney, of the Cunningham claims?

Mr. FINNEY. The first knowledge that I had of the Cunningham claims was in 1905 or 1906, when what is known as the "Fimple letter" was written. Cunningham had asked for an opinion as to whether it would be legal to open up the claims by means of a tunnel.

That letter went to the mineral division, and an answer was there prepared to him. It came through my hands, as a member of the board of law review, and I initialed the letter, and it was afterwards signed by Assistant Commissioner Fimple. That meant, of course, that I approved the answer made.

Mr. VERTREES. Initialed it? Do you mean you prepared it and initialed it?

Mr. FINNEY. No, sir; it was prepared in the mineral division and came through my hands as a member of the board of law review.

Mr. VERTREES. And you approved it?

Mr. FINNEY. Yes; I approved it.

Mr. MADISON. Who did prepare it? Do you know?

Mr. FINNEY. My impression is that Mr. Charles C. Heltman, who had the place known as mineral contest examiner in the mineral division, actually wrote the letter.

Mr. VERTREES. Now, what next, or, particularly speaking, with reference to Mr. Ballinger, what is the first connection that he had with these claims so far as you know or the first thing that you had to do in connection with the claims in connection with him?

Mr. FINNEY. Some time either in November or December, 1907, Mr. Ballinger asked me, and I think it was in the presence of Mr. Schwartz and Mr. Dennett, as to whether the sale of a coal claim after final entry and before patent was legal or illegal. I told him that an entryman who had obtained his final certificate and receipt had a perfect right to sell his claim, the assignee of course taking it subject to any defects that might be found to exist.

Mr. MADISON. You went on the theory that after entry the entryman was the owner of the full equitable title?

Mr. FINNEY. Sure; after he has paid his money and final certificate and receipt is issued he has a vested right, and if patent is issued it relates back to the very moment of the issuance of that receipt.

Mr. MADISON. The Government, after the submission of proof and the approval of the same and the issuance of the final certificate and acceptance of payment, only holds the bare legal title?

Mr. FINNEY. Yes, sir.

Mr. MADISON. And that is conveyed by the issuance of the patent?

Mr. FINNEY. That is correct.

Mr. VERTREES. Were you at any time consulted in your official capacity as to the preparation of a form of patent for Alaska coal lands, and if you say that you were, state when and by whom, and what happened?

Mr. FINNEY. Yes, sir; I was consulted. As near as I can recollect, it was in the early part of January, 1908. Mr. John O'Connell, who is assistant chief of division "B," the patent right division, came up to my desk in the law board room and told me they were writing some patents in some Alaska coal cases and it was the first ones that they had had to consider and they were somewhat in doubt as to the form of patent which should be written. In the United States coal lands can only be entered and patented by the legal subdivision of the public surveys, and, as the committee knows, in Alaska the claims may be taken under the act of 1904 by special survey which is made on the ground. According to my best recollection I was quite busy at the time and told Mr. O'Connell I would look the papers over and would let him know the next morning the con-

clusion I reached. I examined the plat or survey and the papers he had brought up and when he returned the next day I told him that the patents should be written largely in the form which is used in the writing up of lode and placer mining patents where the claims are taken by metes and bounds; that is, they should describe the claims by metes and bounds, with reference to whatever natural monuments or objects which were described in the field notes of the survey.

Mr. VERTREES. And did you prepare a form at any time or a draft of a form?

Mr. FINNEY. I did not write out the patent but I made a suggestion to Mr. O'Connell as to how it should be written.

Mr. VERTREES. Do you recall when the first forms were drawn, or do you know?

Mr. FINNEY. I can not remember the exact time. It was, as I told you, some time in January, 1908, the first part of the month. I do not remember the day.

Mr. VERTREES. Now, do you know anything about the Cunningham matters from that time on down to, say, May, 1909, when Governor Moore came in? Was there anything in between those dates?

Mr. FINNEY. Oh, I knew the entries were pending in the summer of 1908. Secretary Garfield sent word to the office that he desired me to get him some data for his annual report in reference to the Alaska coal fields and the entries that had been made. One thing he wanted to know was whether any entries had been made under the law of 1908. So I, of course, investigated the records, and I found these 33 entries, among which was one made by Clarence Cunningham. I think there had been a few other entries made in the meantime, but all under the act of 1904. I prepared a short statement in reference to the situation, which I think was incorporated in Secretary Garfield's report. I do not recall having had any occasion to look up the entries from that time until May, 1909, after I became Assistant to the Secretary.

Mr. VERTREES. Now, state what happened then within your knowledge.

Mr. FINNEY. In May, 1909, about the middle of the month, Mr. Pierce called me to his room—

Mr. VERTREES. You mean the First Assistant Secretary, Mr. Frank Pierce?

Mr. FINNEY. The First Assistant Secretary, Mr. Pierce, called me to his room and introduced me to ex-Governor Moore, of Washington, who had come in and inquired about his coal entries, and I think also to make inquiries about others of the Cunningham group. Mr. Pierce knew nothing of the status of the claims at that time, I think, and inquired of me, and I knew very little about them, except that they were suspended in the General Land Office pending investigation. I had better explain as to how I knew that.

I knew that the claims were to be investigated by reason of the fact that on November 12, 1906, an order was issued under direction of President Roosevelt that all coal lands in Alaska should be withdrawn from disposition, and that order, as originally issued, not only withdrew the lands but held up all existing claims. On May 16, 1907, a circular was issued, signed by Commissioner Ballinger and Secretary Garfield, to the effect that all claims lawfully initiated prior to the withdrawal order of President Roosevelt should be allowed

That letter went to the mineral division, and an answer was there prepared to him. It came through my hands, as a member of the board of law review, and I initialed the letter, and it was afterwards signed by Assistant Commissioner Fimple. That meant, of course, that I approved the answer made.

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Mr. FINNEY. That was some time in June——

Mr. VERTREES. State what happened in respect to that.

Mr. FINNEY. Mr. Pierce called me to his room and stated his idea of having the testimony taken in the counties where the witnesses resided by a commissioner, and to have the record transmitted directly to the General Land Office at Washington, and asked my opinion as to that procedure. There is no doubt whatever as to the right to take the testimony that way, because that can be done under the act of 1903 providing for the compulsory attendance of witnesses, and we often take the deposition of witnesses in the counties in which they reside. As to the transmittal of the record directly to the Commissioner of the General Land Office for decision, while it is not so usual, there have been a number of cases within my knowledge where we called coal cases up directly from the local office and cut out their decision. Sometimes it is largely done to expedite the work, or where we thought there was such a strong local prejudice that the decision ought to be made originally in the General Land Office. So I told Mr. Pierce that I thought it was a most excellent scheme, and that it would save time and money. I did not at that time know that one of the claimants was the son of the receiver.

Mr. VERTREES. Now, what had Mr. Ballinger to do with your action in any of the respects you have mentioned in regard to the Cunningham claims?

Mr. FINNEY. Why, he did not have anything to do with my actions. I did not talk with him about the claims at all, except that after Governor Moore's interview with First Assistant Secretary Pierce, the Governor addressed two or three letters to Secretary Ballinger which have been printed in the record, I think, and I prepared replies for the Secretary's signature.

Mr. VERTREES. To Governor Moore's letters?

Mr. FINNEY. Yes, sir; the letters were simply sent in to my room and I prepared the replies and I presume the Secretary approved them, because he signed the letters.

Mr. VERTREES. What I had reference to was the action you took and the action Mr. Pierce took in reference to these Cunningham claims. Had Mr. Ballinger anything to do with that in any way?

Mr. FINNEY. No, sir; he never said anything to me about them.

Mr. VERTREES. Or to anybody else, to your knowledge?

Mr. FINNEY. I understood from Mr. Pierce that Secretary Ballinger turned the cases over to him for adjudication. He told Glavis and myself that, on the occasion of our visit there with the memorandum book.

Mr. VERTREES. Mr. Pierce told you that?

Mr. FINNEY. Yes, sir.

Mr. VERTREES. What next do you know about those Cunningham matters? You have given a date along in May, 1909. Did anything more occur before the letter came from the Secretary of Agriculture in June that you recall?

Mr. FINNEY. Yes. After Mr. Pierce talked with me about this stipulation, he asked me whether definite charges had been filed against the claims in the Land Office. I went to the Land Office and found that no formal charges had been preferred by Glavis, and I went back and told Mr. Pierce what I had found out, and he sent a telegram to Glavis asking him to submit his report.

to proceed in the regular order. But there is a statement in that circular that they should be passed upon by special agents, so I knew that there had to be a special agent's report, and I assumed, with the entries being held up, that there had not been a favorable report made.

Mr. VERTREES. Now proceed to state what happened between you, Mr. Pierce, and Governor Moore.

Mr. FINNEY. Well, Mr. Pierce directed me to go to the Land Office and ascertain the status of the claims and report to him, which I did. I went to the Land Office and found that they were being held up, awaiting the report of the special agent. I was told by the chief of the division that Mr. Glavis had the investigations in charge, and that Mr. Glavis was at that very time in Washington and in one of the rooms of the office. So I went to the room where Mr. Glavis was making his temporary headquarters and found him with a trunk full of papers. I told him what Mr. Pierce wanted, and he told me then of having this Cunningham journal, or a copy of it rather, and other papers. I do not know whether I suggested that Mr. Glavis accompany me or whether he made the suggestion, but at any rate Mr. Glavis and I both went back to Secretary Pierce's office that afternoon carrying with us a certified copy of the Cunningham journal and other papers that Mr. Glavis had relative to those claims. Mr. Glavis and Mr. Pierce and myself had some conversation about the claims, and Mr. Pierce asked Mr. Glavis how he expected to use the book. I remember very distinctly his asking that question as to how he expected to introduce it if the hearing was ordered.

Mr. Pierce also asked Mr. Glavis to leave this book and papers with us until the next day, so we could look them over, and that evening and early the next morning Mr. Pierce and I looked through the record. I read hastily through the entire Cunningham journal and called Mr. Pierce's attention, I think, to the opening part where Cunningham has the "grub-stake" statement. The next morning Mr. Pierce again called me to his room, and ex-Governor Moore was present, to find out the status of the claims, and Mr. Pierce told him—he did not show him the journal, as I recall it, or the papers which he had submitted—told him that there would have to be a hearing on these claims, as charges had been made by one of our special agents, which would necessitate an investigation. Governor Moore seemed very much put out because the Government had taken their money, he said, two or three years before, and the cases had been held up, and they had not had an opportunity either to get patents or be denied patents. They did not know where they stood. Mr. Pierce told him that we had no option, that we could have no option, except to order a hearing upon the facts as submitted, but that he would expedite the hearing as much as possible in view of the long delay that had already occurred. And with that Governor Moore had to be satisfied.

Mr. VERTREES. Was the question at that time, or about that time—I do not mean at that hour, but along in those days—of not having the register and receiver at Juneau consider the question, and if so, was that question considered by you and Mr. Pierce, or was that a little later?

Mr. FINNEY. That was some time in June——

Mr. VERTREES. State what happened in respect to that.

Mr. FINNEY. Mr. Pierce called me to his room and stated his idea of having the testimony taken in the counties where the witnesses resided by a commissioner, and to have the record transmitted directly to the General Land Office at Washington, and asked my opinion as to that procedure. There is no doubt whatever as to the right to take the testimony that way, because that can be done under the act of 1903 providing for the compulsory attendance of witnesses, and we often take the deposition of witnesses in the counties in which they reside. As to the transmittal of the record directly to the Commissioner of the General Land Office for decision, while it is not so usual, there have been a number of cases within my knowledge where we called coal cases up directly from the local office and cut out their decision. Sometimes it is largely done to expedite the work, or where we thought there was such a strong local prejudice that the decision ought to be made originally in the General Land Office. So I told Mr. Pierce that I thought it was a most excellent scheme, and that it would save time and money. I did not at that time know that one of the claimants was the son of the receiver.

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Mr. VERTREES. Mr. Pierce told you that?

Mr. FINNEY. Yes, sir.

Mr. VERTREES. What next do you know about those Cunningham matters? You have given a date along in May, 1909. Did anything more occur before the letter came from the Secretary of Agriculture in June that you recall?

Mr. FINNEY. Yes. After Mr. Pierce talked with me about this stipulation, he asked me whether definite charges had been filed against the claims in the Land Office. I went to the Land Office and found that no formal charges had been preferred by Glavis, and I went back and told Mr. Pierce what I had found out, and he sent a telegram to Glavis asking him to submit his report.

Mr. VERTREES. That is the telegram Mr. Pierce gave in evidence?

Mr. FINNEY. Yes, sir.

Mr. VERTREES. Well, what next?

Mr. FINNEY. Well, the next action, I think, was the preparation of a letter to the Commissioner of the General Land Office to the effect that when formal charges were filed he should endeavor to secure this stipulation from the representatives of the Cunningham people, for the purpose of taking testimony in the States.

Mr. VERTREES. Well, that was done, was it?

Mr. FINNEY. I prepared the letter and Secretary Pierce signed it.

Mr. VERTREES. Waiving the Land Office investigation by the register and receiver?

Mr. FINNEY. Yes, sir. The question of waiver, as I understood it, was for this reason—

Mr. VERTREES. Well, the point I am on, I think Mr. Pierce has explained, unless there is something additional that you wish to add, Mr. Finney, I merely want to know if it was done and you were cognizant of it and aided in the preparing of the papers?

Mr. FINNEY. Yes.

Mr. VERTREES. Is that right?

Mr. FINNEY. Yes, sir.

Mr. VERTREES. Is there anything further that should be stated?

Mr. OLMSTED. That answer may be intelligible to somebody up there, but we did not hear it.

The ACTING-CHAIRMAN (Mr. Flint). Speak a little louder, Mr. Finney.

Mr. VERTREES. Did you have anything to do with the preparation of those letters and telegrams looking to that stipulation, the making of that stipulation, as to taking evidence and as to the agreement that the officers, the register and receiver at Juneau, should not consider the matter?

Mr. FINNEY. Yes, sir; I was called upon by Mr. Pierce to advise in that matter, and I prepared a letter to the Commissioner of the General Land Office suggesting the entering into of this stipulation.

Mr. VERTREES. Well, is there anything further now until the time when the Secretary of Agriculture asked for a postponement of the hearing?

Mr. FINNEY. Nothing I recall.

Mr. VERTREES. Now, what happened with respect to that, which I understand was some time in June, 1909?

Mr. FINNEY. About the 22d of June a letter from the Secretary of Agriculture asking that hearings be deferred in the Cunningham cases—

Mr. VERTREES. It was in July, was it not, or was it June?

Mr. FINNEY. July; about the 22d of July that his letter was brought to my desk. It gave no reason for suspending proceedings. It merely contained a request for their suspension. A day or two later I met Mr. Shaw of the Forest Service, and spoke to him about the request for suspension of the cases and told him that I did not think we ought to hold the cases up without a definite reason. He advised me that they had telegraphed their local forest officer for his reason for desiring the suspension of proceedings, and it was suggested that we should defer our answer until they heard from the forest officer. So there was no reply prepared to this letter of July 22, and about

the 28th of July, I think it was, we received another letter from the Secretary of Agriculture, wherein he stated that he was advised that four of the claims had no coal upon them, and that possibly certain others did not contain workable coal, and renewed his request for the suspension until there could be a full examination of the claims. About the same time we received a letter from Mr. Schwartz, of the General Land Office, suggesting suspension, so that on the 29th of July, I think it was, a letter was written and signed by First Assistant Secretary Pierce, suspending action upon the Cunningham cases but urging early action.

Mr. VERTREES. Did you prepare that letter?

Mr. FINNEY. Yes, sir; I wrote that letter.

Mr. VERTREES. That suspended action for the time being?

Mr. FINNEY. Yes; no further action was taken on the cases.

Mr. VERTREES. Now, anything further to your knowledge with reference to that matter?

Mr. FINNEY. No; I recall nothing further in connection with the cases until after Glavis's letter to the President was filed.

Mr. VERTREES. Now I wish to ask you as to your connection with the preparation of that opinion which Mr. Pierce gave construing the act of May 28, 1908. What do you know about that?

Mr. FINNEY. On the 17th or 18th of May—

Mr. VERTREES. 1909?

Mr. FINNEY. 1909. There was brought to my desk by a messenger a proposed letter to the Attorney-General. It was prepared for the Secretary's signature and bore the initials in H. H. S. in typewriting at the top, and I think initialed by Commissioner Dennett at the bottom. It asked four questions with reference to the act of May 28, 1908.

Mr. VERTREES. Is that the letter that was referred to by Mr. Clements in his testimony a while ago?

Mr. FINNEY. I presume so.

Mr. VERTREES. And submitted four propositions?

Mr. FINNEY. Asked four questions with reference to the Alaska coal lands. This is a copy of it, at page 207.

Mr. VERTREES. Now, I wish the committee to understand particularly how that letter came to you.

Mr. FINNEY. Well, I simply know that it was brought to my desk by a messenger, but I may say that I have supervision over the mineral section of the Secretary's office. The mails and files clerks know that to be a fact and a great many inquiries about mineral lands are brought directly to me, and the people in the General Land Office oftentimes send matters directly over to me so that I may express my opinion on them, and they want to get my views on them before the matter goes to the Assistant Attorney-General or the Secretary for final decision.

Mr. VERTREES. Will you please explain who the mails and files clerk is, and what his duties are?

Mr. FINNEY. There is a section in the office called the Division of Mails and Files which receives the incoming mails and attends to mailing the outgoing letters; the letters that come in are opened and registered and distributed from this mails and files section to the various sections or divisions of the office or of the department.

Mr. GRAHAM. You mean that is where the mail bags are opened?

Mr. FINNEY. Yes; and the envelopes.

Mr. VERTREES. They open the envelopes, too, down there?

Mr. FINNEY. Yes; they open the envelopes.

Mr. VERTREES. How do the bureaus, as a rule, communicate with each other—I mean the bureaus of the department—by mail or by messenger, as a rule?

Mr. FINNEY. They usually send their stuff over by messenger.

Mr. VERTREES. Is it in envelopes?

Mr. FINNEY. Yes, sir; usually in envelopes.

Mr. VERTREES. And you say the mail is opened in this Division of Mails and Files—all of it?

Mr. FINNEY. Opened there and distributed, unless it is marked "personal."

Mr. VERTREES. Do you wish the committee to understand that it is your recollection that that is the way this communication came to you?

Mr. FINNEY. This letter was brought to my desk by a messenger from the Mails and Files Division. I don't remember which messenger; there are several of them there.

Mr. VERTREES. That was this paper you have mentioned there, submitting these four questions?

Mr. FINNEY. Yes, sir; that is the paper.

Mr. VERTREES. Now, when it came, what did you do with it?

Mr. FINNEY. I put it down on my desk. I think I was probably busy at the time, that is my recollection. And sometime during the day I took it up and saw that it related to the construction of the Alaska coal act, a subject with which I thought I had some familiarity. Personally I saw no reason for submitting it to the Attorney-General. I thought we were fully capable down there at the department of correctly construing the law and giving sound advice to the Land Office as to how it should be construed. Perhaps I was wrong about that, but that was the view I took of it. So I took the matter up, looked into it carefully, and dictated this memorandum which appears on page 712 of the Senate document. I may say that the construction of the act of May, 1908, had been the subject of quite a little dispute in the Land Office, and I had taken some part in the argument that had been had. The question that I understood that we differed the most upon was whether the act of May, 1908, had a retroactive effect or whether it operated purely in the future. It permitted the consolidation of 16 claims and the making of consolidated entry and the obtaining of patents, and the question which we had up for discussion in the Land Office was whether it allowed people who had agreements to consolidate prior to the passage of this act—some of them, perhaps, had formed corporations for the purpose of consolidating—whether those people could lawfully perfect their claims under the act of May 1908. So with that in view I wrote this memorandum, and I just want to call attention to two or three lines which shows what I thought was presented in this request for instructions [reading]:

The fact that locators who initiated their claims in good faith may have subsequently thereto and prior to May 28 entered into verbal or written agreements to transfer their claims to a company or corporation and receive in return therefor stock in the corporation, should not in my opinion be the occasion of refusing to permit the corporation, or any other corporation which may acquire title to the claims and who comes forward under the act of 1908 with a showing that 75 per cent of its stock is at the time of application held by qualified entrymen, from completing such an entry and obtaining

patent, because, though such a contract or agreement was contrary to the law and rules prior to 1908, yet it is now expressly permitted by that act, and to that extent, in my opinion—though it is not so expressly stated—validates the agreements entered into after location and before May, 1908.

That was the question that I understood to be in dispute. In fact, Mr. Schwartz and I had had a difference of opinion over that very question, and as this request for instruction from the Attorney-General bore Mr. Schwartz's initial in typewriting, I thought it was an effort on his part to reopen that old question. And, as you will see, I thought the question was simply whether those who had entered into these agreements after location, and before passage of this act, might consolidate.

Mr. VERTREES. Did you bring that paper to Mr. Ballinger's attention in any way?

Mr. FINNEY. No, indeed.

Mr. VERTREES. What did you do with that, Mr. Finney?

Mr. FINNEY. I took the memorandum and the proposed letter to the Attorney-General down to Mr. Clements's office.

Mr. VERTREES. By that paper you mean the statement of the questions, not your opinion. Did you bring either one to the attention of Mr. Ballinger?

Mr. FINNEY. No; I did not bring it to Mr. Ballinger's attention.

Mr. VERTREES. Go ahead now, what did you do?

Mr. FINNEY. I want to explain to the committee that we do not run into the Secretary or the First Assistant Secretary or the Assistant Secretary with every letter or paper we get in the department. If we did so, probably there would be some vacancies in the force. We are expected to accomplish results. We usually present matters to the heads of the department in concrete form, after we have written up our opinion and have it all ready for signature. I did not consult anyone about it; I simply wrote this memorandum myself and took the memorandum, together with the proposed letter, to the Attorney-General down to Mr. Clements's office which is five or six doors from the room I occupy, and according to my best recollection he was at work at his desk, and I handed it to him with the statement that the Land Office wanted to go to the Attorney-General's office for the construction of the act of 1908; that I thought we were fully capable of construing it in our own department and, according to my best recollection, he said he thought so, too. I put it down on his desk and left it there.

Mr. VERTREES. Now, wait a moment. Did you at that time or at any time prior to the rendering of the opinion by Mr. Pierce, have any knowledge or information of any conversation or understanding or agreement between the Secretary and Mr. Glavis and Mr. Schwartz, or anybody else, that this should not go to you but to the Attorney-General?

Mr. FINNEY. No; if there was any such agreement I never heard of it until after it was so stated before this committee.

Mr. VERTREES. Well?

Mr. FINNEY. No; I will amend that—until after I saw Glavis's letter to the President.

Mr. VERTREES. This was your first knowledge of any such thing?

Mr. FINNEY. That was the first knowledge I had.

Mr. VERTREES. Now, you had gotten to the point, when I interrupted you, where you had left this statement seeking the opinion on Mr. Clements's desk, and you had gone away.

Mr. FINNEY. Yes.

Mr. VERTREES. What next happened?

Mr. FINNEY. The next day Mr. Clements sent for me to come to his room, and I found Mr. Glavis there. Mr. Clements had my memorandum before him, as well as the proposed letter to the Attorney-General. He told Mr. Glavis that he was about to prepare an answer to those inquiries. He asked Mr. Glavis several questions designed, as I supposed, to find out exactly what was wanted to be ascertained, and I recall Mr. Glavis mentioned the Cunningham cases, but I can not recall the exact language he used. I remember distinctly that Mr. Clements told me that we would only decide the specific case when it came before us in the regular way on appeal, and with the entire record, and that all we could do with a general request like this was to make a broad construction of the law.

Mr. Clements then proceeded to dictate the paper which was afterwards signed by First Assistant Secretary Pierce.

Mr. VERTREES. Was Mr. Glavis present?

Mr. FINNEY. He was present during the dictation of the letter.

Mr. VERTREES. Did he, at any time during that interview, indicate any surprise or intimate that there was any agreement that it should go to the Attorney-General rather than to you?

Mr. FINNEY. No; I am absolutely certain about that.

Mr. VERTREES. Now, Mr. Clements dictated this reply or opinion there in the presence of yourself and Mr. Glavis?

Mr. FINNEY. Yes, sir.

Mr. VERTREES. Then what?

Mr. FINNEY. I think I left the room and returned to my own office.

Mr. VERTREES. When it was brought to the attention of Mr. Pierce by Mr. Clements, or at any time after it had been brought to the attention of Mr. Pierce before he signed it, were you present?

Mr. FINNEY. Yes; Mr. Clements and myself were both present in Mr. Pierce's room when he was considering the proposed opinion, and talked with him about it, and saw him sign it. After he had satisfied himself of its correctness, he signed it in our presence.

Mr. VERTREES. In that discussion did Mr. Pierce ask you what questions you were seeking to decide—to have decided?

Mr. FINNEY. I do not recall just what questions he asked.

Mr. VERTREES. Did you have some discussion with him about the opinion?

Mr. FINNEY. Yes; we discussed the opinion and probably that particular question, because as shown by my memorandum I clearly had the one question in mind, as to whether that law should be given a retroactive effect or not.

Mr. VERTREES. Then, did you take the paper or leave it?

Mr. FINNEY. It was left on his desk, as is the custom, and, I presume taken by his messenger to the mails and files, there press copied, and transmitted to the General Land Office in the regular way.

Mr. VERTREES. That is the usual course of business there?

Mr. FINNEY. Yes, sir; that is the usual course of business there.

Mr. VERTREES. Later, did you have any conversation with the Secretary as to the taking of the opinion of the Attorney-General and if so, when?

Mr. FINNEY. Yes; on the 25th of May the Secretary sent for me, and he had evidently found out in the meantime that we had con-

strued the law, and he said that he thought it was a pretty big question; that he had had that morning some conversation with the Attorney-General in regard to that act, and that he thought we should submit it to the Attorney-General for an opinion, and he directed me to prepare the matter for transmission to the Attorney-General. Of course, I followed his instructions and prepared the letter which is found on page 210 of the Senate document, the letter transmitting the question to the Attorney-General. That letter I showed to the Secretary, because he was the one who had directed me to prepare it. He did not suggest any change in it, but said inasmuch as Mr. Pierce was dealing with Alaskan matters I had better take it to him for signature. I took the letter back and prepared it for the signature of the First Assistant Secretary, and on the 26th it was taken to Mr. Pierce, considered, and signed by him, and transmitted to the Attorney-General the same day in the regular course of business.

Mr. VERTREES. I think the letter is printed at page 230 of the record; and if so, it is not necessary to have it printed again. Look at page 230 and see if that is the same, Mr. Finney.

Mr. FINNEY. It is the same letter. Yes; that is the letter. I quoted verbatim the four questions which had been propounded by the General Land Office and referred to a number of cases which had been decided by the courts.

Mr. VERTREES. When did you first hear that it was claimed that Mr. Ballinger had agreed to submit it to the Attorney-General in the first instance?

Mr. FINNEY. When I saw Mr. Glavis's letter to the President.

Mr. VERTREES. That was your first information on that point?

Mr. FINNEY. Yes; that was in August, 1909.

Mr. VERTREES. Had you seen Mr. Glavis in the meantime personally?

Mr. FINNEY. I think I saw Glavis after the interview in Mr. Clements's office, which I described, but it was about another matter. He was in the Land Office looking up a matter of disbarment proceedings which had been instituted against an attorney in his district, and I talked with Glavis about that.

Mr. VERTREES. We do not care anything about that. Rather, I will say did he then indicate to you that there had been any breach of agreement or understanding?

Mr. FINNEY. No; he never did at any time. I never knew anything about it until I saw that letter to the President.

Mr. VERTREES. Now, Mr. Finney, I will change to the question of the water-power sites, and will ask you to tell the committee what you know about them and Secretary Ballinger's action in respect to them. Beginning with the time shortly after Mr. Ballinger came in office, whether he made any request of you?

Mr. FINNEY. Soon after Secretary Ballinger came in as Secretary he asked me—I was at that time still a member of the Law Board of the General Land Office—to have prepared for him from the records of the General Land Office a table of existing withdrawals of public lands, and I had the table prepared and took it over to him in the department, and in looking over it in his room we came across these so-called "water-conservation withdrawals," and we had some talk about it, and then at that time I told him I did not think there was any warrant of law for the withdrawals. He did not ex-

press any positive opinion to me at that time, but I had the impression that he was going to present the whole matter of withdrawals of public lands to the Cabinet and the President for consideration and discussion.

Mr. VERTREES. Anything further in that conversation?

Mr. FINNEY. No; I do not recall anything further after that.

Mr. VERTREES. Do you know of the fact that certain letters were written about that time by Mr. Ballinger to Senator La Follette with reference to withdrawals, in reply to letters of the Senator, which letters and replies have already been printed?

Mr. FINNEY. I know now that there had been correspondence and interviews with officers of the Reclamation Service, but I did not know it at that time. Almost immediately after my appointment to the department—about April 23 or 24—I was sent for one evening at Secretary Ballinger's room, and found Director Smith there, and found that they had determined upon a policy of withdrawing water power sites in the public lands. Mr. Ballinger wanted me to assist in preparing a form of withdrawals, and he particularly wanted to know whether the department would have the right to suspend pending entries and claims. I was very much surprised to find that he was withdrawing the lands, because I had the impression that he regarded withdrawals as illegal, and I suggested in a quiet way that I thought there was no warrant of law for making withdrawals. He said that the matter had been discussed and it was regarded as a necessity that a temporary withdrawal of these power sites should be made, until Congress could consider the question of legislation concerning them.

Mr. JAMES. Who was this you were talking with?

Mr. FINNEY. Secretary Ballinger. That was either on the day or the day after he made his direction to the Director of the Survey to withdraw water-power sites.

Mr. JAMES. Did he say who the matter had been discussed with?

Mr. FINNEY. No; but I had the impression that it was with the President.

Mr. JAMES. President Taft?

Mr. FINNEY. Yes.

Mr. VERTREES. What did you say about their temporary character?

Mr. FINNEY. I expressed some doubt as to the authority to withdraw them. He said it had been determined upon as necessary to make a temporary withdrawal of these lands until the question could be considered by Congress, and what he wanted me for was to prepare the withdrawals, the form, which I prepared.

Mr. JAMES. What did he say when you questioned the legality of the withdrawals?

Mr. FINNEY. He said that it had been determined upon as being necessary, and gave me to understand it was not an open question for discussion.

Mr. JAMES. Did he question the legality of that himself—did he say it was legal, or did he plead necessity?

Mr. FINNEY. He did not impress me as regarding it as legal. He evidently had doubt in his own mind as to whether it was legal.

Mr. JAMES. He gave the reason as necessity?

Mr. FINNEY. Yes.

Mr. MADISON. And that necessity, are we to understand, was the insistence of the President that it should be done?

Mr. FINNEY. Well, I do not know what the President told him.

Mr. MADISON. From what you said I gained the impression that you felt that that was so.

Mr. FINNEY. I thought it was probably the result of a conference with the President, or with members of the Cabinet, or something of that sort.

Mr. MADISON. You really felt, did you not, Mr. Finney, that while Mr. Ballinger thought that the withdrawals were illegal—those that had been made in the report—that none could be made that would be legal, yet at the same time the President was insistent upon the matter, and he was acquiescing?

Mr. FINNEY. No; the Secretary seemed to think there was a sort of a difference between an indefinite withdrawal of public lands, without any stated reason or limitation, and a temporary withdrawal pending legislation. I could not see any very great difference in principle myself. He seemed to think there was a difference.

Mr. MADISON. Did he seem to think that there was a substantial difference? I am just asking for the facts.

Mr. FINNEY. I understand that. He seemed to think there was a difference. In other words, his action was simply temporary action in aid of legislation. Now, the withdrawals that had been effected were, as we understood them, general in their terms without any limitation.

Mr. JAMES. So you yourself could see no legal distinction between withdrawal for an indefinite time and withdrawal for a definite time, for legislative purposes?

Mr. FINNEY. I do not think any executive officer in the United States has the power to withdraw public lands from disposition unless he is authorized by some law or treaty so to do.

Mr. JAMES. Than to wait upon Congress for action——

Mr. FINNEY. That is my personal view.

Mr. MADISON. You might have to wait a long time, would you not?

Mr. FINNEY. I do not know. Congress has pending before it now a bill authorizing withdrawals, I believe.

Mr. MADISON. Where is it now?

Mr. FINNEY. I do not know where it is.

Mr. VERTREES. Who prepared the bill, Mr. Finney, do you know?

Mr. OLMSTED. I can tell you where it is. It is pending on the calendar and should be the first thing in order next Wednesday.

Mr. JAMES. Your idea, Mr. Finney, is that the withdrawals indefinitely and the withdrawals to wait for Congress to act are both alike—illegal.

Mr. FINNEY. That is my personal view.

Mr. JAMES. Your personal opinion as a lawyer. You have examined the question carefully, I presume?

Mr. FINNEY. Yes, sir. I have given it some consideration.

Mr. GRAHAM. It is also your opinion, is it not, that there is not any legal difference between the two kinds of withdrawals?

Mr. FINNEY. Yes, sir. That is my view.

Mr. GRAHAM. When the withdrawal is made indefinitely it is still subject to action by Congress when Congress pleases to act, and that

when it is made subject to action by Congress there is not a bit of difference in the two kinds of withdrawals—it is subject to the action of Congress just the same, and no more?

Mr. FINNEY. From a legal view point I can see no difference in principle.

Mr. VERTREES. That is your opinion?

Mr. FINNEY. That is my personal opinion.

Mr. VERTREES. You recognize the fact that the Secretary or other people may have a different opinion, Mr. Finney?

Mr. FINNEY. Yes; he may have in mind to restore the land to disposition if Congress fails to act. I do not know the purpose he had in mind.

Mr. VERTREES. Referring now to those letters I asked you about: letters received from Mr. La Follette by Mr. Ballinger, were they not?

Mr. FINNEY. Some time in May there were some letters written by Senator La Follette to Mr. Ballinger asking for information as to the restoration of water-power lands. He also wanted information as to the amount of land that had been withdrawn under the terms of the reclamation act. The letter was sent in to me for preparation of an answer.

Mr. VERTREES. I here call your attention to two letters which are printed, one on page 1180 of the record and the other on page 1181 of the record, and ask you if those are the letters from Senator La Follette, to which you refer?

Mr. FINNEY. Yes, sir; those are the letters from Senator La Follette and the replies which I prepared, and which were signed by Secretary Ballinger.

Mr. MADISON. On what page is that?

Mr. FINNEY. On pages 1180 and 1181.

Mr. VERTREES. I have not got to the replies. I asked you whether you recognize those as the letters from Senator La Follette.

Mr. FINNEY. Yes, sir.

Mr. VERTREES. Did you or not receive instructions to draw replies to those letters from Mr. Ballinger?

Mr. FINNEY. Yes, sir.

Mr. VERTREES. And if you say you did, state first what you did, what inquiries you made, and what you did before drawing those replies.

Mr. FINNEY. Well, as to the questions that related to the amount of land withdrawn under the reclamation act, I sent a note to that bureau for the information with reference to the withdrawal and the revocation; I called for the papers from our files and I found there press copies of letters prepared for the approval of the Secretary signed by A. P. Davis, Acting Director of the Reclamation Service, stating that their recent investigations of the withdrawal of the land was no longer considered necessary in the interests of the United States, and it was recommended that the land be restored. Then as to the work of the Geological Survey—

Senator FLETCHER. Did anybody tell you to do that?

Mr. FINNEY. The letters were sent in to me, Senator, for the preparation of an answer for the Secretary's signature. They were sent in by his private secretary, I presume.

Senator FLETCHER. Did anybody direct you to prepare a letter for Mr. Davis to sign?

Mr. FINNEY. Oh, no, sir; I knew nothing about that. That had been written and approved before I was transferred from the Land Office to the department, but as Senator La Follette's letter inquired as to those restorations I looked at the files, withdrew the file, and carried it to my desk and examined it. Then I got the history of the withdrawals and the restorations. Then as the inquiry in one of his letters raised the question of the Geological Survey being able to do this work, and as to the data they had, I went out to the Geological Survey office on F street and examined their files and talked with some of their men as to what data they had, and they told me they had a lot of extremely engaging data that they had gathered, a lot of topographical material acquired by surveys during the existence of the bureau, and topographical maps which enabled them to make these power-site withdrawals in different areas that they had previously examined very rapidly and very accurately because the topographical maps showed the location of the streams and the fall, and all that sort of thing, and then I found that they had sent to the Land Office, getting a list of the land along those rivers, the lands which were patented. Then I went back to the office and prepared those replies to Senator La Follette, and they were signed by the Secretary.

Mr. VERTREES. I call your attention to two letters printed in the record, one on page 1180, dated May 30, 1909, addressed to Senator La Follette and signed by Secretary Ballinger, the other on page 1182, dated May 25, 1909, addressed to Mr. La Follette and signed by Mr. Ballinger as Secretary, and ask if those are the two letters which you say you prepared for the Secretary?

Mr. FINNEY. Yes, sir; I prepared both of these. The second one is answering the one where he raised the question as to the ability of the survey and as to whether they had the funds to do this work. The letter assured me that they had. I stated in one of those letters that the Geological Survey made those withdrawals as the result of field examination and that was the result of the information I had gathered at the survey. I do not mean field examinations made after the restoration in March and April and before the withdrawals were made, but I meant field examinations made prior to the date of this letter and by the survey. Some of them might have been four or five years before, but the data was on file in that bureau and had been gathered from actual field examination.

Mr. VERTREES. Did you make that inquiry at the Geological Survey at your own instance or by suggestion of the Secretary of the Interior?

Mr. FINNEY. It was at my own instance. I wanted to get accurate information in order to prepare this letter to Senator La Follette.

Mr. VERTREES. As I understand you he merely handed you the letter of Senator La Follette and told you to prepare proper replies, and that was all you had to do with it.

Mr. FINNEY. Yes, sir.

Mr. VERTREES. You did prepare those replies, did you not?

Mr. FINNEY. Yes, sir.

Mr. VERTREES. As the result of your inquiry and investigation?

Mr. FINNEY. Yes, sir.

Mr. VERTREES. And he signed them?

Mr. FINNEY. He signed them in the regular order of business.

Mr. VERTREES. You say that was in the regular order of business?

Mr. FINNEY. Yes, sir.

Senator FLETCHER. Did he read them at all?

Mr. FINNEY. I do not know, Senator; probably not, if he saw my initials on them. I do not think I called special attention to them, although I may possibly have done so.

Senator FLETCHER. I am just getting at the custom and practice of the department.

Mr. FINNEY. There are so many letters that go in for signature that it would be physically impossible for either the Secretary or First Assistant to read all the letters that go to them.

Mr. GRAHAM. Have you any practice in regard to directing his attention to letters such as he ought to read?

Mr. FINNEY. Yes, sir.

Mr. GRAHAM. What is it?

Mr. FINNEY. We put on a little slip of paper with the words "Special attention."

Mr. JAMES. If he never reads them why worry with them at all? Why not just have his name stamped on them with a stencil?

Mr. FINNEY. I do not know why he does not adopt that plan. I think it might be done.

Mr. JAMES. I can not see the need of putting them on his desk if he never reads them.

Mr. FINNEY. I did not say that he never read the letters. I said it was impossible for him to read all of them.

Mr. VERTREES. But I understand you that those letters which are prepared for him by the various officials which they think should be read or brought to his attention are marked in the way you have indicated.

Mr. FINNEY. That is the practice in the department. There is no fixed written rule as to those things, but that is the custom we follow. The Secretary has to depend largely upon his subordinates for all those things, and he tries to have men on whom he can rely.

Mr. VERTREES. Are the letters initialed to that end by the various men in order that he may know where they come from?

Mr. FINNEY. That is the purpose, so that he can look at the initials.

Mr. VERTREES. To see where they come from?

Mr. FINNEY. Yes, sir.

Mr. VERTREES. Do you know or can you give the committee some idea as to the number of letters that the Secretary, day in and day out, on the average, signs, or is called upon to sign?

Mr. FINNEY. No, sir; I do not know. His private secretary can give more accurate information than I can.

Mr. VERTREES. You know, however, that it is a very large number?

Mr. FINNEY. A very large number of letters—many more than he would be able to read.

Mr. VERTREES. Do you prepare in the course of business many letters for him?

Mr. FINNEY. Yes, sir; I write a good many letters, sometimes 15 or 20 in a day. It varies largely.

Mr. VERTREES. I pass now to the matter of the Roosevelt dam about which there has been a controversy, and particularly with respect to the question of whether officers of the Reclamation Service

were consulted in any way with respect to that? I wish you would tell this committee what you yourself know about that matter.

Mr. FINNEY. Mr. Davis's statement that our action was without conference or consultation with the Reclamation Service is not true. On the 23d of June Mr. O'Rourke came to Washington and complained that he had been notified to quit work on this dam.

Mr. VERREES. Mr. O'Rourke was a contractor constructing the dam, was he?

Mr. FINNEY. Yes, sir. Secretary Ballinger was preparing to go West; he left the next day for the West and turned them over to me. I talked with Mr. O'Rourke and found out the cause of his complaint and sent for Mr. Newell to come over to the department to confer with us. On the afternoon of the 23d Mr. Newell did come to the department, and Mr. O'Rourke, Mr. Newell, Mr. Carr, and myself had a conference in the Secretary's private room—a little room adjoining the main office—and I had gotten Mr. O'Rourke's side of the case before Mr. Newell got there and presented it to Mr. Newell in the presence of this contractor and asked Mr. Newell if it was not possible to conduct the work on this dam if the masonry were kept wet by an application of water, and Mr. Newell said he thought the work might be conducted, but he suggested that we ought to have the opinion of the field engineer. Mr. Newell interposed several objections to continuing; for instance, he said that the appropriation made was not sufficient to continue the work during the months of July, August, and September, and the cement mill which was being run by the Government to supply cement for this dam was not turning out quite as much cement as O'Rourke was able to use. So I got the impression that the real reason for suspending the work was a lack of funds and a shortage of cement rather than the fear of injury to the masonry. There was also a doubt in my mind as to the legal right to suspend the contract because of that clause that they could suspend after the dam reached a height of 150 feet. I thought that meant they could not suspend work on any part of the dam which was below 150 feet. Mr. Newell suggested that he would telegraph out to the local engineer in charge of the work, and the matter stood that way. I told Mr. O'Rourke to put his side of the case in writing and file it so that we would have some basis for action. The next day Mr. Newell sent me a little memorandum, which I think has been printed in the record, from the engineer in which he said, "Would not advise continuance of work." He did not give any reason for that, and as I said a moment ago, I thought the real reason was shortage of funds and cement, and I had a doubt as to the right of the Government to stop work under the terms of the contract. So under those conditions, being convinced that the work might be continued without injury to the masonry, I prepared the letter which Secretary Pierce signed on June 24, reversing the action of the Reclamation Service and permitting the work to continue. Two or three days afterwards Mr. Newell came down and raised a stir with Assistant Secretary Pierce. He said the lawyers of the department did not know anything about engineering and that we were going to injure this great dam by ill-advised action, and that the engineers on the ground should be given discretionary power to stop work whenever they saw it dangerous to continue. Mr. Pierce seemed to be a little bit disturbed about the matter, but

he said that inasmuch as Secretary Ballinger had something to do with the matter, the part he took in it was simply turning O'Rourke over to me, and I tried to tell him on the afternoon of the 23d the results of our conference, but he was so busy getting ready to go West that I do not think he heard what I said; at any rate he did not take any definite action. Mr. Pierce insisted on sending the whole matter out to Secretary Ballinger in the Yellowstone Park for decision. We sent out the papers and telegrams we had on the subject for his consideration, and later on I think a sort of compromise was reached and the work was continued on the lower part of the dam and stopped on the higher parts.

Mr. VERTREES. Then you did have, beforehand, a consultation with Mr. Newell as to what should be done?

Mr. FINNEY. I certainly did have a consultation with Mr. Newell. Mr. Newell's testimony on that point is substantially correct, except that I think he omitted to say that he agreed with O'Rourke and myself that the work might be continued provided the masonry was kept wet.

Mr. VERTREES. Did he, in point of fact, at that time, in that conference, agree that it could be done if it was done that way?

Mr. FINNEY. He certainly did.

Mr. VERTREES. Who was present?

Mr. FINNEY. Mr. Carr, the secretary to the secretary; Mr. O'Rourke, the contractor; Mr. Newell, and myself.

Mr. VERTREES. What have you to say to the committee, Mr. Finney, as to the question of the cooperative certificates that has been discussed and the Secretary criticised in his actions in respect to that matter?

Mr. FINNEY. About July 1, 1909, while Secretary Ballinger was in the West, there came to my desk a letter prepared in the Indian Office, signed by Commissioner Valentine, and a place at the bottom of the letter for the written approval of the Acting Secretary. It had attached to it a list of positions which were supposed to be created upon Indian reservations in connection with forestry work—

Mr. VERTREES. Wait a moment. You misunderstood me. I asked you about certificates. You are now on the cooperative agreement.

Mr. FINNEY. I thought you were talking about timber on the Indian reservations.

Mr. VERTREES. No; I asked for cooperative certificates, and you are talking about cooperative agreements; but as you are going on in that matter I will just let you proceed with your statement.

Mr. FINNEY. The letter of Mr. Valentine referred to the act of March 1, 1909, as to the cooperative agreement; it said the employees to be appointed under this act and listed upon the accompanying paper were to be handled under the cooperative agreement. I did not know what the cooperative agreement was at that time. I looked over the law and found that the act of March 1, 1909, appropriated \$100,000 for the care of timber on the Indian reservations; and, as I read it, it made the Secretary of the Interior responsible for its disbursement. Then I looked up this cooperative agreement in our files, and found that that cooperative agreement said that employees who were working on the Indian reservations, handling timber, etc., should be wholly under the control of the Forestry

Service and responsible only thereto. I went over to the Indian Office and tried to find out just what work had been done under that agreement, and talked with Mr. Valentine and some of his subordinates on the subject, and I found this comptroller's opinion of September 3, 1908, and one, I think, of 1907, which considered the whole matter very thoroughly; and about, I think it was, the 7th or 8th of July I wrote a sort of memorandum on the subject and prepared a substitute letter for Mr. Pierce to sign, wherein I used the same language as the letter originally submitted to Mr. Valentine, except that I left out reference to the cooperative agreement, my idea being to leave that question entirely open and appoint the employees, giving authority to appoint the employees, but not to commit ourselves as to who should control them. I took that to Mr. Valentine, or saw him in the department, I forget which; I know I got his signature to this amended formal letter, and took it in to Mr. Pierce, and Mr. Pierce approved it, and about the 9th of July, I think, I was called to Mr. Pierce's room when Mr. Pinchot was there. Mr. Pierce said that Mr. Pinchot was complaining that we had put an end to the cooperative agreement; that it had caused a great deal of trouble and duplication of work, etc. I told Mr. Pierce and Mr. Pinchot that it was a question of law with me; that I did not think the law permitted us to pay employees of the Indian Office out of an appropriation given to us by Congress and put those employees under the absolute control of the Forestry Service and responsible only to them. Mr. Lawler was called in, I think about the same time, and took the same view of the law that I did. Mr. Pierce then told Mr. Pinchot that he would have to be governed by the advice of the law officers of his department, but agreed to submit the matter to Secretary Ballinger, and he submitted a telegram and a letter. The telegram was necessarily brief, but the letter contained quite a lengthy statement of the questions involved, and had with it as exhibits my memorandum, the copy of the comptroller's opinions, and one or two memoranda prepared in the Indian Office.

Mr. VERTREES. Look on page 1355 of the evidence and see if those are the telegrams you refer to?

Mr. FINNEY. Yes, sir; that is one telegram.

Mr. VERTREES. Which one do you refer to? There are three on that page.

Mr. FINNEY. The one of July 10 is the telegram we prepared and sent. It says at the bottom: "Am mailing cooperative agreement and letter;" that was the letter I mentioned. Then Secretary Ballinger replied as is shown below—

Mr. VERTREES. By "shown below" you mean the second telegram on page 1355?

Mr. FINNEY. Yes, sir. Then he sent a second telegram, in which he says:

If cooperation is impracticable by transfer of experts to our rolls, take such action as will secure best results.

Then later Mr. Pierce again wired Secretary Ballinger, as appears on page 1356, as follows:

Lawler thinks our forestry appropriation can not be administered under existing cooperative agreement; therefore I have directed Valentine to proceed independently, calling, however, on Forestry Bureau for expert advice when needed.

Mr. VERTREES. Now, as I understand you, with respect to that, Mr. Ballinger, being in the West, telegraphed to the officers of the department here, or particularly to Mr. Pierce, the Acting Secretary, that "if cooperation is impracticable by transfer of experts to our rolls, take such action as will secure best results."

Mr. FINNEY. Yes, sir.

Mr. VERTREES. And Mr. Pierce thereupon consulted Mr. Lawler. Did he consult you?

Mr. FINNEY. Yes, sir; he consulted with me, too.

Mr. VERTREES. And was it agreed among you that it was illegal for the reasons you have stated?

Mr. FINNEY. Mr. Lawler and I were of the opinion all the time that it was illegal, and Mr. Pierce finally adopted our view, though the impression I had at the outset was that he was anxious to continue the cooperative arrangement. With Mr. Lawler and myself it was simply a question of law.

Mr. VERTREES. So that was the way the cooperative agreement was terminated?

Mr. FINNEY. Yes, sir.

Mr. VERTREES. And that was the Secretary's connection with it, personally and individually?

Mr. FINNEY. All Secretary Ballinger knew about it was from our telegrams and memoranda.

Mr. MADISON. He approved your action?

Mr. FINNEY. Not exactly. He wired back here in rather an indefinite way. His last telegram was after he got the letter of the 10th, which explained it fully:

If cooperation is impracticable by transfer of experts to our rolls, take such action as will secure best results.

It was rather an indefinite answer. Then following that Mr. Pierce sent the message I have described:

Lawler thinks our forestry appropriation can not be administered under existing cooperative agreement; therefore I have directed Valentine to proceed independently, calling, however, on Forestry Bureau for expert advice when needed.

Mr. GRAHAM. The word "forestry" appears there. Has it any meaning?

Mr. FINNEY. He refers to the appropriation made in the act of March 3, 1909, for the care of forests on Indian reservations. Indian forestry would have been more nearly correct. And we notified the Indian office then by letter, July 17, 1909, that the cooperative agreement must be terminated, and sent a copy of that letter to Secretary Wilson, expressing at the same time a desire to have the assistance of their experts, if it were practicable and possible, in advising our men how to conduct the work. I had considerable talk with Mr. Valentine as to whether it could be handled. He said they could get the same men for guards and subordinate officers, but the difficulty would be to get men to supervise the work, and I suggested, I think, to Mr. Valentine, or to one of his chief clerks, that Mr. O'Neill, in charge of the Chippewa logging up in Minnesota would be able to give the names, probably, of two or three good men to supervise the logging operations. In other words, I thought under the law we would have to build up our own forestry regulation on Indian reservations, and I understand that has been done, and at the same time they are taking

care of the timber on the Indian reservations under an Indian office organization. One word more on that Mr. Vertrees. I looked also into this question of the payment for the work that had been done by the forestry, and so far as I can find that payment has all been in the way of reimbursement for work done by the forestry—that is to say, forestry officers did the work while they were on their own rolls, under the pay and direction of the forestry service. They did the work for the Interior Department, and later put in a claim for money expended or work performed for us, and were paid through reimbursement.

Mr. VERTREES. Mr. Finney, I call your attention here to vouchers which appear in the record at pages 1416 and those which follow, and ask you if those are the vouchers to which you refer? And if you say that they are, explain to the committee whether or not, although they were paid, there is anything in them to indicate they were paid under this so-called cooperative agreement.

Mr. FINNEY. Yes, sir; the one on 1416 there is a statement about cooperative work.

Mr. VERTREES. Where is that?

Mr. FINNEY. The letter of May 10, 1909, signed G. G. Anderson, acting forester.

Mr. VERTREES. It speaks of cooperative work; that is, of the work done in connection with the two, does it not?

Mr. FINNEY. Yes, sir.

Mr. VERTREES. What have you been doing since that agreement was abrogated?

Mr. FINNEY. Since the agreement has been abrogated we have had our own forestry force on the Indian rolls paid from the Indian Office appropriation and controlled by the Commissioner of Indian Affairs under the supervision of the Secretary.

Senator FLETCHER. How does the expense compare with the old system?

Mr. FINNEY. We think we are running it more cheaply, Senator; but it would hardly be fair to compare it, I think, because we have not had the thing running quite a year. My understanding is that this is a reimbursement proposition. Here, however, this voucher you are talking about, I do not understand that this man was upon our pay roll, but on the Indian Office roll.

Mr. VERTREES. What do you understand about it; that he was on their rolls, and it was just a case of reimbursement?

Mr. FINNEY. That was my understanding; yes.

Mr. VERTREES. Do you know, Mr. Finney, what Secretary Ballinger's attitude with reference to Alaska coal lands and public-land matters in general from the time he came into office down to this time has been?

Mr. FINNEY. Please read the question.

The reporter read the question, as follows:

Do you know, Mr. Finney, what Secretary Ballinger's attitude with reference to Alaska coal lands and public-land matters in general from the time he came into office down to this time has been?

Mr. VERTREES. Or, begin with at the time he became commissioner, if you prefer? You were a member of the board of law review when he became commissioner?

Mr. FINNEY. I was a member of the board of law review at the time when Mr. Ballinger was appointed commissioner. I was in

Mr. VERTREES. Now, as I understand you, with respect to that, Mr. Ballinger, being in the West, telegraphed to the officers of the department here, or particularly to Mr. Pierce, the Acting Secretary, that "if cooperation is impracticable by transfer of experts to our rolls, take such action as will secure best results."

Mr. FINNEY. Yes, sir.

Mr. VERTREES. And Mr. Pierce thereupon consulted Mr. Lawler. Did he consult you?

Mr. FINNEY. Yes, sir; he consulted with me, too.

Mr. VERTREES. And was it agreed among you that it was illegal for the reasons you have stated?

Mr. FINNEY. Mr. Lawler and I were of the opinion all the time that it was illegal, and Mr. Pierce finally adopted our view, though the impression I had at the outset was that he was anxious to continue the cooperative arrangement. With Mr. Lawler and myself it was simply a question of law.

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care of the timber on the Indian reservations under an Indian office organization. One word more on that Mr. Vertrees. I looked also into this question of the payment for the work that had been done by the forestry, and so far as I can find that payment has all been in the way of reimbursement for work done by the forestry—that is to say, forestry officers did the work while they were on their own rolls, under the pay and direction of the forestry service. They did the work for the Interior Department, and later put in a claim for money expended or work performed for us, and were paid through reimbursement.

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Mr. VERTREES. Or, begin with at the time he became commissioner, if you prefer? You were a member of the board of law review when he became commissioner?

Mr. FINNEY. I was a member of the board of law review at the time when Mr. Ballinger was appointed commissioner. I was in

quite close touch with him during his entire service as commissioner. The law board are the legal advisers of the commissioner, and as I was in charge of the mineral work I was called quite frequently into Secretary Ballinger's room to confer with him about land matters and since I have been Assistant Secretary I was brought into more or less close touch with him. Did you ask me his attitude toward land matters?

Mr. VERTREES. Yes.

Mr. FINNEY. Well, he is better informed on public land matters than the average commissioner or Secretary that we have had during my period of service in the Interior Department, and I have never seen any act on his part, either oral or written, which I thought was in any way wrong or questionable. He impressed me always as being a man who was endeavoring to faithfully administer the laws, and to do justice to the claimants.

Mr. VERTREES. Did he, to your knowledge, have anything to do with the Cunningham claims, in any way?

Mr. FINNEY. No; I have no personal knowledge of any connection that he has with the Cunningham claimants, except in answering Governor Moore's letters that I have already mentioned.

Mr. VERTREES. But so far as the actions of the various officers are concerned, what I want to know is, did he in any way attempt to influence them to your knowledge?

Mr. FINNEY. No, sir; he never tried to influence them in any way that I know of, and I am positive that he never tried to influence me in any particular.

Mr. VERTREES. You understood, did you not, that he had turned over the matter of the Alaska coal claims, particularly the Cunningham claims, to Mr. Pierce, the First Assistant Secretary?

Mr. FINNEY. Mr. Pierce told us that on the occasion of our interview with him in May.

Mr. VERTREES. My question was to bring out that matter, while he had done that as a matter of order and direction, whether in reality, you being in the office there, there was any act or thing that you could refer to to show that that was not a good-faith order and had been lived up to by Mr. Ballinger fully and entirely.

Mr. FINNEY. As far as I know that has been lived up to absolutely.

Mr. VERTREES. Do you know what his general views and opinions were with respect to the Alaskan coal laws?

Mr. FINNEY. Yes, sir; I had a number of conversations with him in the General Land Office. I had a number of talks with Alaskan people while he was commissioner, and we all had the idea that the law was antiquated and inadequate; that the acreage was insufficient to warrant a man in developing a mine there. One hundred and sixty acres is entirely too small a tract, especially in that country, for successful mining. I also had a good deal of talk with Mr. Ballinger about the coal land laws of the States, and he broached, in his annual report, the idea of separating the surface from the coal deposits, that is, of disposing of the surface in fee and later disposing of the coal deposits underneath, either by a fee title or by leasing.

Mr. VERTREES. Mr. Finney, much has been said about a contract called the Lake Tahoe contract. What do you know about that, and Mr. Ballinger's connection with that?

Mr. FINNEY. That involves a reclamation project.

Mr. BRANDEIS. Can you give reference to the page where that occurs?

Mr. VERTREES. No, sir; I have not got it here at present.

Mr. FINNEY. Davis testified about that.

Mr. VERTREES. I find that it is on page 1921 of the record. I have a reference to it. It is probably that—1921 is a reference—

Mr. DENBY. Mr. Chairman, I move that we adjourn.

The ACTING CHAIRMAN (Senator Flint). I understand that some of the members of the committee have some important business to attend to, and the chair will entertain the motion to adjourn.

Mr. OLMSTED. I second the motion.

The ACTING CHAIRMAN. Before the motion to adjourn is put the record will show the following letter received from Mr. John N. Steele, dated April 13, 1910, together with the communications therewith inclosed:

NEW YORK, April 13, 1910.

HON. KNUTE NELSON,
*Chairman Joint Investigating Committee,
United States Senate, Washington, D. C.*

DEAR SIR: I inclose herewith letter under date of the 8th instant, just received by me from Judge Curtis H. Lindley, in reply to my letter of the 31st ultimo, a copy of which is also inclosed.

I am, with great respect, very truly, yours,

JOHN N. STEELE.

MARCH 31, 1910.

CURTIS H. LINDLEY, Esq.,
604 Mills Building, San Francisco, Cal.

MY DEAR JUDGE LINDLEY: When I was before the joint committee appointed to investigate the Interior Department and Forestry Service I was asked to request you to send any correspondence that you had regarding the Cunningham coal claims. This request or direction appears on page 2232 of No. 24 of the hearings before the committee, copy of which I am sending you herewith.

Will you be good enough, at your earliest convenience, to make a search of your files and forward to me or to the committee such papers as you may find, together with a letter stating that you have made a search of your files and that the papers inclosed are the only ones.

I think perhaps it will be better, since the committee requested me to ask you to make this search, for you to send such papers as you may find and your letter regarding them to me, so that I may forward them to the committee and so discharge my obligation.

There have already been filed with the committee: (1) Your letter of July 20, 1907, to Mr. Eccles; (2) your telegram of August 24, 1907, to Mr. Eccles; (3) your letter of August 28, 1907, to Mr. Eccles; (4) your letter of January 3, 1910, to Mr. Eccles, the last letter being erroneously dated "1909."

I do not suppose it will be necessary for you to forward copies of these particular letters and the telegram, as they are already filed with the committee, but I think your letter should state that copies of these particular letters are not forwarded because you were informed by me that they were already in the possession of the committee.

Faithfully, yours,

JOHN N. STEELE.

SAN FRANCISCO, CAL., April 8, 1910.

JOHN N. STEELE, Esq.,
*General counsel, M. Guggenheim's Sons,
165 Broadway, New York City, N. Y.*

MY DEAR Mr. STEELE: I have your favor of March 31, requesting that I forward to you such correspondence as appears in my files in relation to the Katalla coal property, and the Cunningham contract drawn by me at Salt Lake City, July 20, 1907.

I am advised by your letter that there have already been filed with the committee: (1) My letter of July 20, 1907, to Mr. Eccles; (2) my telegram to Mr. Eccles of August 24, 1907; (3) my letter to Mr. Eccles of August 28, 1907; (4) my letter of January 3, 1910 (erroneously dated 1909), to Mr. Eccles.

I have printed copies of the proceedings of March 25 and 26, 1910, before the committee to investigate the Interior Department and Forestry Service, containing the testimony of yourself and Mr. Birch, from which I observe that all of the foregoing correspondence has been printed. I do not, therefore, inclose copies.

My files do not show anything beyond these which would aid the committee in its investigation, or which concerns Mr. Guggenheim's connection with the Cunningham coal properties. It might be well for me to explain for the information of the committee, that my connection with the Cunningham affair was accidental and temporary. The venture was beyond my field of professional activities, and there was no reason why I should have been consulted any further than as disclosed in the above-described correspondence.

I have made an affidavit as to Mr. Guggenheim's connection with the Cunningham venture at the request of the Government, through Mr. Underwood, assistant chief of one of the bureaus. This affidavit is in Washington, and will undoubtedly be available to the committee and it states the full truth so far as I know.

Sincerely yours,

CURTIS H. LINDLEY.

The ACTING CHAIRMAN. The record will also show the following request for the production of documents:

WASHINGTON, April 13, 1910.

HON. KNUTE NELSON.

Chairman Joint Investigating Committee.

DEAR SIR: Mr. Paul Sleman has just read to me over the telephone the letter received by you to-day from the Attorney-General in response to my letter to you of April 7, 1910 (testimony, p. 2870).

I respectfully request that your committee request the Secretary of the Senate to transmit to you the original papers referred to by the Attorney-General.

Yours, truly,

LOUIS D. BRANDEIS.

The ACTING CHAIRMAN. The record will also show the following responses to requests for the production of documents:

OFFICE OF THE ATTORNEY-GENERAL,
DEPARTMENT OF JUSTICE,
Washington, D. C., April 12, 1910.

HON. KNUTE NELSON,

*Chairman Committee to Investigate the
Interior Department and Forestry Service,
United States Senate.*

MY DEAR SENATOR NELSON: Replying to your letter of 7th instant, transmitting letter addressed to you by Mr. Brandeis, under date of April 7, in which he quotes from my letter of March 23, viz: "The only papers that I can find in this department which could come within this description other than those transmitted to you with my letter of March 16, 1910, are copies of communications submitted to me by the President, the originals of which have been already transmitted by him to you, and which therefore must be in the hands of your committee," and saying: "I am not aware that any 'originals' have been at any time transmitted by the President to this committee, and in order that the committee and counsel may be definitely advised in the matter, I respectfully request that the Attorney-General be requested to furnish a complete list 'of the copies of communications' submitted to him by the President—together with all letters of transmittal from the President or his secretary and replies thereto."

Upon more careful investigation I find that the papers to which I referred, and which I was of the impression had been transmitted to your committee, were those transmitted by the President to the Senate, not to your committee, in response to the resolution of the Senate of December 21, 1909, by a message from the President, dated January 6, 1910 (Cong. Rec., Jan. 6, 1910, pp. 379-380). I assume that the originals of those papers are in the hands of the Secretary of the Senate, and no doubt at the disposal of your committee.

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I beg to hand you a copy of my communications to the President which are referred to in his message to Congress. The other papers which he refers to are, as stated above, undoubtedly in the hands of the Secretary of the Senate.

Respectfully,

GEO. W. WICKERSHAM,
Attorney-General.

THE SECRETARY OF THE INTERIOR,
Washington, April 13, 1910.

SIR: On March 30, 1910, Mr. Brandeis called for, among other things, (4) A list of all companies seeking patents or seeking to consolidate claims under the Alaska coal law of May 28, 1908, and all papers relating to any such applications.

You are advised that there are only three such applications now pending in the General Land Office, namely, Juneau 0456, application of the Chignik Coal Mining Company; Juneau 0862, application by the Pittsburg Coal Company; and Juneau 01222, application by the Cleveland Coal Company.

The papers relating to these applications are very numerous, and it would take some time to make copies of all of them. It is the rule of the department not to allow original papers out of its possession until a copy has been made to be retained in the files. If Mr. Brandeis will indicate what hours in any day or days when he cares to look over these papers, they will be sent up to the committee in the custody of a clerk of the General Land Office to enable Mr. Brandeis to have full opportunity to examine the same. Should any copies thereof be desired, upon receipt of such information the same will be promptly furnished.

I submit herewith a copy of a letter from the register of the Juneau land office, dated March 26, 1910, giving the status of all the applications under the act of May 28, 1908, still pending in that office which have not yet been forwarded to the General Land Office; also, the report referred to in said letter. The report, which is in the shape of a memorandum, gives the status of entries pending before the Juneau land office, and contains information which, in the opinion of the department, should not be made public. It is requested that this report be not printed in the record of the hearing.

Very respectfully,

R. A. BALLINGER, *Secretary.*

Hon. KNUTE NELSON,
*Chairman Joint Investigating Committee,
Room 210, Senate Office Building.*

THE SECRETARY OF THE INTERIOR,
Washington, April 13, 1910.

SIR: I have the honor to acknowledge the receipt of your letter of the 8th instant, confirming the telephone message from your office in the matter of the resolution adopted by the joint committee on the 8th instant relative to the submission to the committee of certain records of this department.

Replying to your letter of the 30th ultimo, I beg to say, with reference to the "affidavits or statements in relation to the so-called missing letters," requested by Mr. Brandeis in his letter of the 30th ultimo, that all of said affidavits or statements were introduced on April 8 in connection with the testimony of Mr. Christensen.

(2) Letters from Glavis to Bowman, dated August 29 and September 7, 1909, it is believed, are in the possession of Mr. Colter, chief of field division, General Land Office, at Duluth, Minn. Mr. Colter has been directed to furnish the letters in question.

(3) With regard to the request for the letter from "Glavis to Commissioner Dennett of June 10, 1908," you are informed that the records of the General Land Office fail to show the receipt of such a letter, and neither Mr. Schwartz nor Mr. Murphy have any recollection of ever having seen said letter, and Mr. Glavis in his testimony (p. 146 of the record), states:

" * * * I prepared a report along in June to the Commissioner of the General Land Office * * * , which I intended to transmit along with a copy of the United States attorney's letter; * * * but I learned that Dennett was expected in Portland a short time after writing that letter, so I did not send it, * * * "

(4) The original letter from the United States attorney to Glavis, dated November 6, 1908, is herewith.

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(5) The records of the department fail to show any correspondence to or from Mr. Behrens since January 1, 1910.

Referring to Mr. Brandeis's letter of March 31, I submit herewith the following:

(1) A copy of the directions from Assistant Commissioner Dennett to chief of Division "N," dated September 1, 1907.

(2) Original letters between Division "N" and Mr. Schwartz, as follows: November 5, 1907, from Heltman to Schwartz, advising that six coal entries are awaiting clear-listing; December 6, 1907, from Heltman to Division "P," advising that Charles J. Smith entry No. 3 is ready for patenting; January 3, 1908, from Heltman to Division "P," advising that W. W. Baker entry No. 22 is ready for patenting; January 4, 1908, from Schwartz to Division "N," clear-listing Cunningham entries; January 23, 1908, from Schwartz to Division "N," recalling the letter of January 4, 1908.

(3) Carbon of receipt, dated August 6, 1909, given by Special Agent Bowman to the Juneau land office.

(4) All the original papers relating to the Cunningham claims now or formerly in Division "B" have heretofore been submitted to your committee.

(5) Original letter, dated June 21, 1907, from Acting Commissioner Dennett to Horace T. Jones.

(6) All communications between any official of this department and Mr. Christensen subsequent to January 1, 1910, relating to the so-called missing letters, were introduced on April 8 in connection with the testimony of Mr. Christensen.

(7) All letters and telegrams between any official of the department and Mr. Christensen relating to the production of evidence before the joint committee were introduced on April 8 in connection with the testimony of Mr. Christensen.

Very respectfully,

R. A. BALLINGER, *Secretary.*

HON. KNUTE NELSON,
*Chairman Joint Investigating Committee,
Room 210, Senate Office Building.*

THE SECRETARY OF THE INTERIOR,
Washington, April 14, 1910.

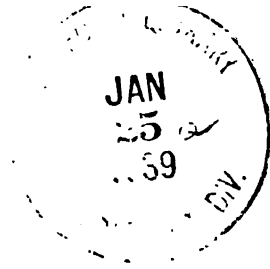
SIR: In further reply to your letter of the 30th ultimo, I transmit herewith the original letters of August 29 and September 7, 1909, from L. R. Glavis to A. R. Bowman; also the list of people to be interviewed by said Bowman, mentioned in the letter of August 29.

Very respectfully,

R. A. BALLINGER,
Secretary.

HON. KNUTE NELSON,
Chairman Joint Investigating Committee, United States Senate.

(The motion to adjourn was agreed to; and accordingly, at 4 o'clock and 45 minutes p. m., the committee adjourned until to-morrow, Saturday, April 16, 1910, at 10 o'clock a. m.)



NO. 30

**HEARINGS BEFORE THE COMMITTEE TO INVESTIGATE THE
INTERIOR DEPARTMENT AND FORESTRY SERVICE**

APRIL 16, 1910

**ROOM 207, SENATE OFFICE BUILDING
WASHINGTON, D. C.**

MEMBERS OF THE JOINT COMMITTEE.

KNUTE NELSON, Minnesota, Chairman.

SAMUEL W. MCCALL, Massachusetts, Vice-Chairman.

FRANK P. FLINT, California.

GEORGE SUTHERLAND, Utah.

ELIHU ROOT, New York.

WILLIAM E. PURCELL, North Dakota.

DUNCAN U. FLETCHER, Florida.

MARLIN E. OLMSTED, Pennsylvania

EDWIN DENBY, Michigan.

E. H. MADISON, Kansas.

OLLIE M. JAMES, Kentucky.

JAMES M. GRAHAM, Illinois.

PAUL SLEMAN, *Secretary.*

I beg to hand you a copy of my communications to the President which are referred to in his message to Congress. The other papers which he refers to are, as stated above, undoubtedly in the hands of the Secretary of the Senate.

Respectfully,

GEO. W. WICKERSHAM,
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SIR: On March 30, 1910, Mr. Brandeis called for, among other things, (4) A list of all companies seeking patents or seeking to consolidate claims under the Alaska coal law of May 28, 1908, and all papers relating to any such applications.

You are advised that there are only three such applications now pending in the General Land Office, namely, Juneau 0456, application of the Chignik Coal Mining Company; Juneau 0862, application by the Pittsburg Coal Company; and Juneau 01222, application by the Cleveland Coal Company.

The papers relating to these applications are very numerous, and it would take some time to make copies of all of them. It is the rule of the department not to allow original papers out of its possession until a copy has been made to be retained in the files. If Mr. Brandeis will indicate what hours in any day or days when he cares to look over these papers, they will be sent up to the committee in the custody of a clerk of the General Land Office to enable Mr. Brandeis to have full opportunity to examine the same. Should any copies thereof be desired, upon receipt of such information the same will be promptly furnished.

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(2) Letters from Glavis to Bowman, dated August 29 and September 7, 1909, it is believed, are in the possession of Mr. Colter, chief of field division, General Land Office, at Duluth, Minn. Mr. Colter has been directed to furnish the letters in question.

(3) With regard to the request for the letter from "Glavis to Commissioner Dennett of June 10, 1908," you are informed that the records of the General Land Office fail to show the receipt of such a letter, and neither Mr. Schwartz nor Mr. Murphy have any recollection of ever having seen said letter, and Mr. Glavis in his testimony (p. 146 of the record), states:

" * * * I prepared a report along in June to the Commissioner of the General Land Office * * * , which I intended to transmit along with a copy of the United States attorney's letter; * * * but I learned that Dennett was expected in Portland a short time after writing that letter, so I did not send it, * * * "

(4) The original letter from the United States attorney to Glavis, dated November 6, 1908, is herewith.

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(5) The records of the department fail to show any correspondence to or from Mr. Behrens since January 1, 1910.

Referring to Mr. Brandeis's letter of March 31, I submit herewith the following:

(1) A copy of the directions from Assistant Commissioner Dennett to chief of Division "N," dated September 1, 1907.

(2) Original letters between Division "N" and Mr. Schwartz, as follows: November 5, 1907, from Heltman to Schwartz, advising that six coal entries are awaiting clear-listing; December 6, 1907, from Heltman to Division "P," advising that Charles J. Smith entry No. 3 is ready for patenting; January 3, 1908, from Heltman to Division "P," advising that W. W. Baker entry No. 22 is ready for patenting; January 4, 1908, from Schwartz to Division "N," clear-listing Cunningham entries; January 23, 1908, from Schwartz to Division "N," recalling the letter of January 4, 1908.

(3) Carbon of receipt, dated August 6, 1909, given by Special Agent Bowman to the Juneau land office.

(4) All the original papers relating to the Cunningham claims now or formerly in Division "B" have heretofore been submitted to your committee.

(5) Original letter, dated June 21, 1907, from Acting Commissioner Dennett to Horace T. Jones.

(6) All communications between any official of this department and Mr. Christensen subsequent to January 1, 1910, relating to the so-called missing letters, were introduced on April 8 in connection with the testimony of Mr. Christensen.

(7) All letters and telegrams between any official of the department and Mr. Christensen relating to the production of evidence before the joint committee were introduced on April 8 in connection with the testimony of Mr. Christensen.

Very respectfully,

R. A. BALLINGER, *Secretary.*

Hon. KNUTE NELSON,
*Chairman Joint Investigating Committee,
Room 210, Senate Office Building.*

THE SECRETARY OF THE INTERIOR,
Washington, April 14, 1910.

SIR: In further reply to your letter of the 30th ultimo, I transmit herewith the original letters of August 29 and September 7, 1909, from L. R. Glavis to A. R. Bowman; also the list of people to be interviewed by said Bowman, mentioned in the letter of August 29.

Very respectfully,

R. A. BALLINGER,
Secretary.

Hon. KNUTE NELSON,
Chairman Joint Investigating Committee, United States Senate.

(The motion to adjourn was agreed to; and accordingly, at 4 o'clock and 45 minutes p. m., the committee adjourned until to-morrow, Saturday, April 16, 1910, at 10 o'clock a. m.)

SATURDAY, APRIL 16, 1910.

JOINT COMMITTEE TO INVESTIGATE THE
INTERIOR DEPARTMENT AND FORESTRY SERVICE,
Washington, D. C., April 16, 1910.

The Joint Committee to Investigate the Interior Department and Forestry Service met pursuant to adjournment at 10 a. m.

There were present as counsel: Mr. Louis D. Brandeis, representing Mr. Louis R. Glavis; Mr. George Wharton Pepper and Mr. Nathan A. Smyth, representing Mr. Gifford Pinchot; Mr. John J. Vertrees and Mr. Carl Rasch, representing Secretary Ballinger.

The CHAIRMAN. The committee will come to order. Please proceed with your witness.

TESTIMONY OF EDWARD C. FINNEY—Resumed.

The **CHAIRMAN**. Before we proceed, I want to call attention of counsel to the fact that at the instance of the committee, Mr. Dudley, from Alaska, was subpoenaed to come here. He is here, and I imagine we can dispose of him in a very few minutes, so that he can go home; and if there is no objection, and counsel will agree to it, we will postpone Mr. Finney's examination for a moment until we get through with Mr. Dudley.

Mr. **BRANDEIS**. He was called at Judge Madison's special request, and I see the judge is not here this morning.

The **CHAIRMAN**. It was done on the order of the committee. The motion was put.

Mr. **BRANDEIS**. By Judge Madison.

The **CHAIRMAN**. The motion was made by him, but the motion was put to the committee to order him to appear, and he is a witness called by the committee.

Mr. **MCALL**. Judge Madison is not here now, and I suggest that he be not called until Judge Madison comes.

Mr. **BRANDEIS**. We can put him on later.

The **CHAIRMAN**. Very well, then; we will proceed.

Mr. **VERTREES**. Mr. Finney, discussing the proposed bill now pending before Congress with respect to withdrawals. When we adjourned on yesterday you were asked as to them, and I do not recall that you stated who prepared that bill which is now pending.

Mr. **FINNEY**. It was first suggested by Secretary Ballinger in his annual report to the President November 10, 1909, and between that date and the convening of Congress he directed me to prepare a bill to provide for the withdrawal of public lands, to authorize the executive to make withdrawals, and I prepared a rough draft of a bill which Secretary Ballinger revised, and which was finally sent, with the approval of the President, up to the Senate Committee on Public Lands, and introduced by Senator Nelson, I think. It was sent up with other conservation bills.

Mr. **VERTREES**. At the moment of adjournment we were on the question of the Lake Tahoe contract, about which there has been much criticism of Mr. Ballinger in various ways.

Mr. **FINNEY**. The Reclamation Service desired——

Mr. **VERTREES**. State what you know about that.

Mr. **FINNEY**. The Reclamation Service desired to utilize the surplus waters of Lake Tahoe for reclamation of lands in the Truckee-Carson project in Nevada. They filed a notice of appropriation, as required by the state laws, but they found in the possession of the lake outlet an electrical power company which was generating electric power and running seven factories along the Truckee River. The question came up as to whether the outlet and the dam at the outlet of the lake could be acquired by purchase or condemnation. During Secretary Garfield's administration a proposition was submitted by the electric company then owning the outlet to furnish to the United States surplus water of the lake on condition that the company be allowed to retain control of the outlet and to generate and use the power developed by the fall there. They also proposed tentatively to run a tunnel out of the eastern boundary of the lake to carry the surplus waters down to Lake Washoe and store them there for the use of the

Reclamation Service. Secretary Garfield approved this tentative proposition in 1908—April, I think.

Mr. VERTREES. What is the attitude of the Reclamation Service toward that?

Mr. FINNEY. The Reclamation Service recommended it, and Secretary Garfield approved their recommendation.

Mr. VERTREES. Have you the recommendation approved by Secretary Garfield or a copy of it?

Mr. FINNEY. This is a copy of it. It is dated April 24, 1908, and approved by Mr. Garfield the same day.

Mr. VERTREES. I would like you to read that to the committee, Mr. Finney.

Mr. FINNEY (reading):

DEPARTMENT OF THE INTERIOR,
Washington, April 24, 1908.

THE SECRETARY OF THE INTERIOR.

SIR: Much difficulty has been encountered in securing the property at the outlet of Lake Tahoe through the Fleishhackers, who control the lands. Negotiations have been in progress for more than four years and but little advance has been made.

At the present time the California-Nevada Electric Power Company is making plans for a large power development in western Nevada, and it is understood has secured an option from the Fleishhacker interests for their power plants on the Truckee River and also for the lands at the outlet of Lake Tahoe. There is good reason to believe that this company can secure the necessary funds for carrying out their plans and closing these transactions with the Fleishhacker interests. The company, however, recognizes the necessity of avoiding interference with irrigation development, and recognizes also the fact that cooperation with the Reclamation Service is essential to a successful development of its plans for utilizing the waters of the Truckee River.

The company proposes if it secures control of Lake Tahoe to provide for a maximum storage and by means of a tunnel some four miles long to draw the water of the lake to the Washoe Valley at the eastern foot of the mountains, utilizing the large available fall for the development of power.

The company can readily provide storage in Lake Tahoe and Washoe Lake to the extent at least of 200,000 acre-feet annually, and is willing to furnish this water supply to the Reclamation Service with proper guaranties to insure delivery upon the understanding that the United States will make no further effort to secure the control of the outlet of Lake Tahoe.

The questions involved, so far as the Reclamation Service is concerned, have been under consideration by the chief engineer and several boards of engineers at various times for nearly a year. The country has been inspected, the company's plans have been studied, and the conclusion has been reached that such a plan as is outlined in the accompanying letter addressed to Mr. F. G. Baum, president of the company, would meet fully the requirements of the Truckee-Carson project in regard to storage in Lake Tahoe, would solve many difficulties involved in the pending negotiations with the various interests concerned, and would, moreover, constitute a material saving in dispensing with the necessity of construction, by the Reclamation Service, of regulating devices to control the waters of Lake Tahoe.

I recommend, therefore, that you authorize the acceptance of the tentative proposition as outlined in general terms in the accompanying draft of a letter to Mr. Baum.

Very respectfully,

F. H. NEWELL, *Director*.

Approved April 24, 1908.

JAMES RUDOLPH GARFIELD,
Secretary.

And attached is a copy of the letter addressed to Mr. Baum by the Reclamation Service.

Mr. VERTREES. I do not know that it is necessary to read that, but I desire them both, Mr. Chairman, to be printed as a part of the record.

The CHAIRMAN. That is admitted in evidence.

(The letter is as follows:)

APRIL 24, 1908.

Mr. F. G. BAUM,
President California-Nevada Electric Power Company,
Washington, D. C.

DEAR SIR: Careful consideration has been given to your plan for handling storage in Lake Tahoe as follows:

1. Your company is to store and deliver to the Reclamation Service for the Truckee-Carson project a minimum of 200,000 acre-feet of water at such times during the irrigation season of each year, comprising the period from April 15 to October 15, as may be needed for the project.

2. Said water supply is to be delivered through Washoe Lake or through the natural channel of the Truckee River, or both, as may be found practicable by your company. The water delivered is to be measured at the outlets of Lake Tahoe and Washoe Lake.

3. Appropriate stipulations for insuring this water supply to the project will be incorporated in a contract to be entered into between the company and the United States.

The propositions so outlined are in full accord with the plans of the United States for the development of the Truckee-Carson project and a contract so drawn as to carry these propositions into effect will be acceptable to the Reclamation Service.

Very respectfully,

_____,
Director.

Mr. VERTREES. Now proceed with your statement.

Mr. FINNEY. The matter was pending and undisposed of when Secretary Ballinger came into office in March, 1909. In April, 1909—I think on the 22d or 23d—there was received in the department a letter from Mr. Davis, Acting Director of the Reclamation Service, transmitting proposed contract relative to the power developments of this lake. Do you wish this read?

Mr. VERTREES. Read the letter.

Mr. FINNEY (reading):

DEPARTMENT OF THE INTERIOR,
UNITED STATES RECLAMATION SERVICE,
OFFICE OF THE DIRECTOR,
Washington, D. C., April 22, 1909.

The SECRETARY OF THE INTERIOR.

SIR: Herewith is transmitted a letter regarding a proposed contract for the control by the Government of the outlet of Lake Tahoe as required in connection with the Truckee-Carson project. The letter is accompanied by a draft of the contract and reviews its principal features. It is assumed that the contract will be thoroughly reviewed in the office of the Assistant Attorney-General.

There is also transmitted draft of a letter to the Secretary of Agriculture, prepared for your signature, submitting a feature of the contract which involves the Tahoe National Forest.

Very respectfully,

A. P. DAVIS, Acting Director.

And attached to this is a long letter or memorandum, signed by Mr. Davis, dated April 22, 1909, setting out this proposed contract, and concluding:

The draft of contract is submitted with recommendation that the same be examined and that the form be approved if found satisfactory.

Very respectfully,

A. P. DAVIS,
Acting Director.

Mr. VERTREES. I do not think that it is necessary to read that.

The CHAIRMAN. You offer all that in evidence? It is admitted.

(The paper is as follows:)

DEPARTMENT OF THE INTERIOR,
UNITED STATES RECLAMATION SERVICE,
OFFICE OF THE DIRECTOR,
Washington, D. C., April 22, 1909.

THE SECRETARY OF THE INTERIOR.

SIR: I have the honor to transmit herewith draft of a contract proposed to be entered into with the Truckee River General Electric Company for the control of the outlet of Lake Tahoe by the United States in order to secure the proper storage of water in the lake for the Truckee-Carson project.

Storage in Lake Tahoe has always been regarded as an essential part of the Truckee-Carson project and negotiations for the acquisition of ownership or control of the outlet have been in progress for about six years.

At one time it appeared possible to acquire the ownership of a tract of land at the outlet at a cost of \$56,000, the purchase having been authorized by the Secretary of the Interior on September 23, 1908.

Subsequently there was a change in ownership, and it became impossible to close the purchase, and it also seemed impracticable to reach any adjustment at all.

The needs of the project for storage had become urgent and it seemed necessary to acquire the ownership of the outlet by proceedings in eminent domain. Accordingly, the Attorney-General was requested by the Secretary of the Interior to bring such proceedings under date of January 9, 1909.

Suit was brought in February, 1909. Meanwhile there had been a further change in the control of this land and the parties now in control renewed the negotiations, which have culminated in a draft of contract that seems to this office to be acceptable and which also appears satisfactory to the interests in control.

The contract provides that the Truckee River General Electric Company shall reconstruct the dam at the outlet of Lake Tahoe and provide for a change in grade of the Lake Tahoe Railway and Transportation Company so that there may be safely discharged 2,500 cubic feet of water per second down the Truckee River.

Commencing on November 1, 1909, the United States is to have exclusive control of the operation of the dam and outlet works and shall be entitled to use for the Truckee-Carson project all the waters available by storage in the lake, subject to specified quantities of flow needed for certain electric and manufacturing plants along the Truckee River and subject also to prior rights of irrigators in Reno Valley.

Under the terms of paragraph 5, it is agreed that when the company shall relieve the United States of the necessity of regulating the flow so as to serve the power plants on the Truckee River and when the company shall have made adequate provision to satisfy other vested rights along the river, there shall be delivered to the company at another outlet an amount of water equivalent to a daily average draft of 240 cubic feet per second.

This water is intended to be used through a tunnel tapping the waters of the lake on the east side and carrying them into Washoe Lake through a power plant. This is an alternative proposition in case the company carries out its contemplated plan for power development by these means. The company in this case is required to make such provision by storage or otherwise that there shall be no waste for irrigation purposes of the waters diverted through their tunnel.

In case this plan is carried out the company is to have the exclusive right to use the waters so diverted for power purposes before they are delivered to the United States for the Truckee-Carson project and the company is to have the right to use the public lands which may be necessary in connection with these plans.

In addition to the other mutual considerations the United States is to pay to the company an amount equal to one-half the cost of the outlet works and is also to lease to the company a tract of 63 acres adjoining the outlet which is now owned by the United States and was purchased some years ago in connection with the project. The company is to have the option of purchase of this land in case authority for that purpose shall be given by Congress within ten years from the date of the contract. The contract also provides that the control of the outlet works shall not be transferred by the United States to any other person, firm, or corporation.

Paragraph 13 provides that the contract shall be subject to the approval of the Secretary of the Interior, whose approval or disapproval will be signified within thirty days from the receipt of copy thereof, duly executed by the company.

It is understood that this draft of contract is about to be submitted to the company in San Francisco and it is therefore desired that the views of the department thereon may be available by the time the company has taken action, which it is understood will be at an early date.

The proposed tunnel of the company will lie wholly upon private land and runs for about 2½ miles within the limits of the Tahoe National Forest.

There is herewith transmitted a draft of a letter to the Secretary of Agriculture with draft of the contract to be forwarded with request for a statement whether there is anything objectionable in the provisions of paragraph 7 relating thereto.

The stipulations of the contract seem to this office reasonable, and all interests of the project are fully protected.

The draft of contract is submitted with recommendation that the same be examined and that the form be approved if found satisfactory.

Very respectfully,

A. P. DAVIS,
Acting Director.

(—, 1909. To Assistant Attorney-General for consideration. ———, Secretary.)

Mr. VERTREES. Now, then, when that plan, or, rather, when those were received by Secretary Ballinger, what was done with them?

Mr. FINNEY. He turned the draft of the contract over to Mr. Oscar Lawler, Assistant Attorney-General. Mr. Lawler was going to California to close up some of the affairs of his former office, and decided to look the matter over on the ground and consult with Assistant District Attorney Devlin in San Francisco and with the local officers of the Reclamation Service; so he took the contract with him and finally submitted a report from either San Francisco or Los Angeles to the Secretary, recommending a number of changes in the contract, designed, as he thought, to better secure the interests of the United States.

Mr. VERTREES. Did he await his return or did he do that by mail?

Mr. FINNEY. He sent that by mail; returning the draft of the contract.

Mr. VERTREES. Suggesting any modifications?

Mr. FINNEY. A considerable number of modifications; yes, sir.

Mr. VERTREES. Then when it was returned to the office, what did Mr. Ballinger do at that time?

Mr. FINNEY. He turned the contract and Mr. Lawler's suggestions over to myself and Mr. Pollock, assistant attorney. We reviewed the suggestions very carefully and looked over the contract, and most of Mr. Lawler's suggestions were adopted. Mr. Pollock made some additional suggestions; I made some. We also consulted with Mr. Morris Bien, law officer of the Reclamation Service, and I believe adopted one or two amendments that he suggested. I may also say that a copy of the contract was sent to the Forest Service, and about June 9 or 10 we received—I am not certain about the date, it was sometime before the 15th of June—we received a letter from Secretary Wilson inclosing a memorandum or letter from Mr. Pinchot opposing the approval of the contract, and we considered that in connection with the contract.

Mr. VERTREES. Have you a copy of that memorandum of Mr. Pinchot's?

Mr. FINNEY. I do not know whether I have or not.

Mr. VERTREES. I do not think I have it, Mr. Finney.

Mr. FINNEY. No, sir; I have no copy of that here.

Mr. VERTREES. Well, did he raise objections?

Mr. FINNEY. He raised a number of objections, as I recall it now, based on the idea that we were going to give away some valuable water-power rights to private interests. The matter was called to Mr. Newell's attention, and Mr. Newell told me that he intended to see Mr. Pinchot personally.

Mr. VERTREES. When you say it was called to Mr. Newell's attention, I wish you would state whether or not Mr. Newell and Mr. Bien, attorney for the bureau, were consulted with reference to the matter at that stage.

Mr. FINNEY. Yes; we were in consultation with them while we were considering this contract during the early part of June.

Mr. VERTREES. Who are "we" that you say were in consultation?

Mr. FINNEY. Mr. Pollock, assistant attorney, and myself.

Mr. VERTREES. Where was the Secretary at that time?

Mr. FINNEY. He was in his office, but his time was taken up largely with other matters. He was consulted with reference to the contract. I, myself, probably pointed out one or two features that I thought should be eliminated, and I recall that he concurred in one which proposed to give the company an option to purchase certain lands owned by the United States on the margin of the lake at the end of ten years. I remember his directing that that be struck out, but he did not have the time—

Mr. VERTREES. As I understand you, you and Mr. Pollock considered it after consultation with Mr. Newell and Mr. Bien?

Mr. FINNEY. We considered it.

Mr. VERTREES. And did you report the result of your consideration and deliberations to the Secretary?

Mr. FINNEY. We did.

Mr. VERTREES. In what form? What I mean is, was it a report or did you draw up a contract or submit amendments of the original contract which had been submitted when it came to the office? How was it presented to him?

Mr. FINNEY. Well, the first step I took was to have a draft rewritten containing Mr. Lawler's suggestion. Then Mr. Pollock and I went over that draft and made certain suggestions on the margin as to what should be eliminated or what should be added, and we talked that over with Secretary Ballinger and secured his approval or disapproval of the suggestions we made, and I finally had a clear draft of the contract embodying the various changes which had been suggested and approved made.

The CHAIRMAN. I understood you to say a moment ago that you also consulted with Mr. Bien, of the Reclamation Service?

Mr. FINNEY. Yes, sir, I did; and Mr. Newell. I adopted one or two suggestion Mr. Bien made, with reference particularly to the control of the water.

Mr. VERTREES. Please state Mr. Bien's position and official relation with the department.

Mr. FINNEY. He is supervising engineer in charge of legal matters in the Reclamation Bureau.

I think I was interrupted when stating that Mr. Newell had volunteered to go and interview Mr. Pinchot and endeavor to have him withdraw his objection to the approval of this contract, and Mr. Newell realized that it was very essential to the success of the Truckee-Carson project that they should have additional water; and he regarded the benefits which the United States would obtain from this contract as far outweighing any possible power possibilities which the company might develop, and in drawing the contract we were very careful to stipulate that this company, if it applied for any rights of way for power, should apply under the existing

laws. In other words, they simply had no right except what anyone else could have. The outcome of it was that on the 15th of June Mr. Newell wrote a memorandum addressed to Secretary Ballinger, pointing out at length the advantages which would result to the Government by the approval of this contract, and the saving of money which would follow. That was all carefully considered.

Mr. VERTREES. Did you say the 15th or 16th?

Mr. FINNEY. I said the 15th—the 15th or 16th.

Mr. VERTREES. I hand you here a paper and ask you if that is the paper to which you refer, dated June 16, 1909?

Mr. FINNEY. Yes, sir. There are two. There is a letter dated June 16, 1909, signed by Mr. Newell, a 2-page letter; then there is an 8-page memorandum wherein he sets out more fully the conditions surrounding the matter and the advantages which would be derived from the approval of the contract.

Mr. VERTREES. Mr. Chairman, I desire that letter and the accompanying memorandum to be made a part of the record.

The CHAIRMAN. It is admitted.

Mr. VERTREES. I do not think it is necessary to read it to the committee.

(The papers are as follows:)

DEPARTMENT OF THE INTERIOR,
UNITED STATES RECLAMATION SERVICE,
Washington, D. C., June 16, 1909.

The honorable the SECRETARY OF THE INTERIOR.

SIR: Referring to the proposed agreement with the Truckee River General Electric Company, transmitted by Mr. A. P. Davis for your approval on June 9, it now appears that after several conferences the objections heretofore raised have been met.

It is important that the contract be entered into, as the benefits accruing are an ultimate saving to the United States of approximately \$1,000,000 in the cost of water storage; also an immediate saving of about \$85,000 in the cost of the land and dam. In addition there is a gain in time worth, directly and indirectly, many thousands of dollars to the people of Nevada.

If a contract embodying these matters is not entered into, it will be necessary to initiate condemnation proceedings, which, even if successful, can not be expected to leave the Government in any better position. At most, it is hoped by condemnation to gain possession of the ground covering the outlet works, but this does not carry with it any additional water supply nor additional water power, and no greater control of the waters of Lake Tahoe. In other words, by condemnation proceedings the Government would be placed in a position of responsibility to operate the outlet in the interest of vested rights already accrued along the river, and would then be compelled to negotiate some such contract as that now proposed when the question of power development is raised, which may be at any time.

So far as can be ascertained from the records, there is no considerable area of public land involved in the future operations of the company. The point of second diversion and the tunnel are wholly on lands which have passed into private ownership. There may be some small isolated tracts of public land which may be crossed or covered by future proposed works, but which can possibly be avoided by detours. The public interests, however, can be considered when, in due course of time, the company's plans are more definitely matured and applications made for the right to use such lands. A more complete memorandum is transmitted herewith.

I therefore respectfully recommend that the agreement be approved at the earliest practicable date.

Very respectfully,

F. H. NEWELL, *Director*.

Approved ———, 1909.

—————, *Secretary*.

MEMORANDUM FOR THE SECRETARY.

DEPARTMENT OF THE INTERIOR,
UNITED STATES RECLAMATION SERVICE,
Washington, D. C., June 16, 1909.

Analysis of conditions involved in proposed contract with Truckee River General Electric Company for control of waters of Lake Tahoe.

The contract covers two independent propositions, from each of which the United States derives substantial benefits. The company is benefited by one of them. The two propositions are:

1. The control of the outlet of Lake Tahoe and of its storage possibilities.
2. The utilization of the waters of the lake for a new power development.

The two propositions will be separately discussed.

First. By this contract the United States gains all the benefits which it would derive by purchase or condemnation. It obtains the exclusive right to control the outflow of the lake. It can secure the maximum benefit of water storage for the Truckee-Carson project and is not limited in the management of the outlet, except so far as may be required to supply water rights on the Truckee River, which have long since vested and are now in actual use.

The Government is, of course, required to recognize the vested rights of the irrigators in Reno Valley, Nevada. The exact extent of these rights is not now known, but is in course of determination by the state engineer of Nevada.

If the United States should condemn the land at the outlet, the minimum price to be expected is \$50,000. The estimated cost of the dam, which the Government would then be required to construct at its sole expense, is also about \$50,000. The estimated cost of moving the railroad track, which is necessary to provide for the increased discharge of the river, is not accurately known, but is estimated at about \$10,000.

The acquisition by condemnation of title to the outlet would therefore cost at least \$110,000 and would give to the United States no benefit that is not given by this contract at a cost of \$25,000.

Second. The other proposition covered by the contract is independent of the first and is one which the department must necessarily meet even if title to the outlet be acquired by condemnation.

The possible power development by driving a tunnel from the east to tap the waters of Lake Tahoe is of great importance to the entire western half of the State of Nevada. Such a tunnel may be built within the next few years, regardless of any action which might be taken upon this contract. The department will then be confronted with the question as to what steps can be taken to protect the storage required in Lake Tahoe for the Truckee-Carson project. There appears to be no reason for asking greater concessions than those provided by this contract.

The benefits derived for the Truckee-Carson project from the concessions made by the company in regard to the tunnel proposition are practically equivalent to securing for the project the entire storage capacity of Lake Tahoe, amounting to about 200,000 acre-feet per annum, and without the necessary diminution on account of the power plants on the Truckee River and on account of the irrigation rights in Reno Valley. The value of the benefit was estimated in the letter of the Reclamation Service on June 9 as about \$1,000,000.

The company assumes under the proposed contract the responsibility for satisfying all vested water rights, in itself a valuable concession to the Government.

In discussing the general proposition, reference has been made to the company obtaining permission to construct the tunnel through the national forest. As the land involved is in private ownership, it is doubted whether an application to the Agricultural Department would be necessary to secure the right to construct the tunnel even though the land is included within the external boundaries of the national forest.

In regard to the other storage reservoirs which the company would construct for the purpose of rendering available to the United States the full storage capacity of Lake Tahoe, in case the tunnel is built it is definitely known that few, if any, tracts of public land will be involved. It may be stated that these few tracts of public land were withdrawn some years ago under the provisions of the reclamation act for the purpose of providing additional storage, to be used in practically the same manner as is proposed under this contract.

To summarize the benefits to the Government under this contract, we may state that in money it represents a saving of about \$85,000 in the purchase of the land at the outlet of Lake Tahoe and the construction of the dam. It also saves ultimately about a million dollars to the Government in providing additional storage.

The further advantage to the people of the country is the saving of several years in time and the withholding of an immediate outlay from the reclamation fund to provide the storage which the project now requires. This is estimated at about \$400,000.

This \$400,000 is not a net saving to the United States in the long run, but the necessity for providing this amount at once would involve serious considerations in the allotment of funds to the various projects. The contract would permit the postponement of this expenditure until some future time when the larger projects now under construction are completed.

OBJECTIONS TO THE CONTRACT.

Assistant Attorney-General Lawler, in his criticism of the contract, mentions the possible complications which might arise because of further development of power on the Truckee River.

If the company does not build its tunnel this question would not be material, as these possibilities might be developed without affecting the water supply. If the company builds its tunnel, the company will be required as a condition precedent to satisfy all vested rights along Truckee River. The effect of additional power developments on the Truckee River could not in any event be detrimental to the interests of the Truckee-Carson project.

The other objections presented in the Assistant Attorney-General's letter have been met by changes made in the contract. In regard to the question of water rights, the Reclamation Service in 1903 made a complete abstract of water-right claims of record involving the Truckee River, both in California and Nevada. It has since kept in close touch with the conditions and is informed as to all matters which would affect the rights of the Government, which depend upon water-right appropriations filed May 21, 1903, and upon diligent prosecution of the work for the utilization of the water supply in question.

Objection was made by the Assistant Attorney-General that the proposed contract gives the power company extensive rights on public lands along the Truckee River and its tributaries, most of which lands are now included within the national forest.

As hereinbefore stated, the amount of public lands involved is very small, and the company could readily acquire the right to use them in connection with its power development by making an appropriate application to the Department of Agriculture. In such case the Secretary of Agriculture would submit the matter to the Department of the Interior, and in order to preserve the interests of the Government it would be necessary for the Secretary of the Interior to recommend either to refuse the rights involved or to impose such conditions as would be necessary to protect the interests of the project, which would necessarily be along the same lines as in this contract.

The Government must then decide either to refuse the use of these lands entirely, and thus prevent the development of this enterprise without itself being able to utilize the lands for many years, or secure a stipulation containing conditions of much the same character as in this contract.

No exclusive rights are given to this company for the purposes in question. In fact the company agrees to limitations upon the use of its own lands in order that its use of the public lands may not interfere with the interests of the Government.

CONDEMNATION PROCEEDINGS.

A successful suit in condemnation would give the Government no additional water supply, no additional water power, and no greater control over the waters of Lake Tahoe than it would acquire under this contract.

The vested rights involved in the delivery of 400 and 500 second-feet of water, as required by the contract, can not be eliminated by condemnation proceedings except by including in the proceedings the power and manufacturing plants now in existence along Truckee River, for which this water is to be furnished. This probably would cost in the neighborhood of \$3,000,000 and the right to acquire these commercial plants may be questioned.

Furthermore, the 500 second-feet to be delivered in the summer for the power plants is nearly all required, in any event, to meet the irrigation demands in the Reno Valley.

Condemnation proceedings will involve a delay of perhaps five years if the case is vigorously fought by the company. They involve the General Treasury in large expenditure for legal proceedings and will cost the reclamation fund at least \$85,000 more than is necessary in order to acquire the same rights by this contract. United States Attorney Devlin has expressed some doubt whether the United States has such rights in the matter as will furnish a proper basis for condemnation.

The powers given to the Secretary by section 7 of the reclamation act to acquire any rights or property necessary to carry out the provisions of the act by purchase or by condemnation under judicial process would surely cover a contract which will secure to the Government every advantage that could possibly be derived by condemnation proceedings.

Very respectfully,

(Signed) F. H. NEWELL, *Director.*

Mr. VERTREES. Then what happened, Mr. Finney?

Mr. FINNEY. That was called to the attention of Secretary Ballinger, together with the redrafted contract which I had in my possession. I looked after the typewriting; that is, I had the new draft prepared and had it in my possession and called it to Secretary Ballinger's attention. And I also told him that there was opposition to its approval by the Forest Service, but I told him that as a result of an inquiry I had made at the General Land Office I found that there was no public land on the borders of Lake Tahoe except two 40-acre tracts which were entirely remote from the proposed power development, that it appeared there was a large amount of private land along the line of the proposed tunnel through this national forest, and that the representative of the power company, Mr. Wallace, of Boston, I think, who was present, said that they proposed to run out their diversion tunnel over private lands and that they would not interfere with the government forest lands, nor could they be prevented from running their tunnel by the Forest people, because they could secure a right of way over private land. All those things were called to the Secretary's attention, and on the afternoon of June 16 he directed me to prepare a letter to the representative of the electric company, stating that he would approve a contract in the form which we had prepared, provided it were duly executed by the officers of the company.

Mr. VERTREES. Have you a copy of that letter?

Mr. FINNEY. I had a copy made. It is a very short letter. Yes, sir, I have a copy of that here.

Mr. VERTREES. Read that, please.

Mr. FINNEY (reading):

DEPARTMENT OF THE INTERIOR,
Washington, June 16, 1909.

SIRS: Referring to the attached copy of proposed agreement between your company, as represented by Mr. Wallace, and the United States relative to the use of waters from Lake Tahoe and the Truckee River for irrigation, and to the control and operation of works constructed or to be constructed in connection therewith, I have to advise you that upon presentation of a contract identical with this copy duly executed same will receive my approval.

Very respectfully,

R. A. BALLINGER, *Secretary.*

The TRUCKEE RIVER GENERAL ELECTRIC COMPANY,
Washington, D. C.

Mr. VERTREES. I wish that to go in.

The CHAIRMAN. That is admitted.

Mr. VERTREES. What was then done with it?

Mr. FINNEY. The letter was mailed, together with a copy of the contract which I had marked on each page, so as to be able to identify it if it came back, and the next thing I heard from the matter—

Mr. VERTREES. Mailed to whom; to those parties?

Mr. FINNEY. To the Truckee River General Electric Company, and the Reclamation Bureau was advised of our action—furnished

with a copy of the contract. The next thing I heard was during the summer of 1909, when the contract was returned executed by the company for the approval of the Secretary. Secretary Ballinger was then in the West and Mr. Pierce was Acting Secretary, and I told Mr. Pierce of the circumstances attending the tentative approval of the contract by Secretary Ballinger, but before the contract was approved and delivered a letter was received from the White House—from the President or the President's secretary—asking for a report on the matter. With that letter from the White House was a copy of a telegram from a man named William Kent, of San Francisco, protesting against the approval of the contract, as I recall it, on the ground that we were giving away valuable power privileges. A report was made to the President, and so far as I know the matter has not yet been finally disposed of.

Mr. VERTREES. Do you know who examined the case and prepared that report to the President?

Mr. FINNEY. Mr. Lawler and myself. It was quite a lengthy report.

Mr. VERTREES. Did Mr. A. C. Campbell have anything to do with it?

Mr. FINNEY. He did prepare a report later.

Mr. VERTREES. Go ahead then——

Mr. FINNEY. After Secretary Ballinger's return he conferred with the President in regard to the matter and suggested to the President that he would have the matter looked into by Mr. A. C. Campbell, an attorney in the Attorney-General's office.

Mr. VERTREES. He was in the Department of Justice?

Mr. FINNEY. The Department of Justice. He is a man very familiar with water-right laws. I may say that in the meantime other protests have been received. There was an unsigned memorandum filed with the President, which contained a number of objections to the contract, very similar to those previously advanced by the Forest Service, and there were two or three protests filed by parties who claimed to have some interest in the waters of this lake.

Mr. VERTREES. Do you remember the names?

Mr. FINNEY. Mr. James Waymire was one of the protestants, of San Francisco. So that the Secretary secured permission of the Attorney-General to have Mr. Campbell review the matter, and he made a very exhaustive report which I construed as being favorable to the approval of this contract, but, as I say, the matter is still, so far as is known, under consideration.

Mr. VERTREES. By whom?

Mr. FINNEY. By the President or Secretary.

Mr. VERTREES. Well, that report went from Mr. Campbell to the President?

Mr. FINNEY. That went to the President along with other papers.

Mr. VERTREES. And your statement is, if I understand you, that the matter has just hung there in the hands of the President since that time?

Mr. FINNEY. That is my understanding; yes, sir.

Mr. VERTREES. Now, what I wish to know is, whether or not Mr. Ballinger personally wrote any of these contracts, or drafts of contracts?

Mr. FINNEY. He did not. He certainly did not. The contract, as stated a moment ago, was written in the Reclamation Service; the modifications which were made were written by Mr. Lawler, Mr. Pollock, Mr. Bien, and myself. Of course, they were submitted to Secretary Ballinger for consideration.

Mr. OLMSTED. What do you mean when you say it was written by the Reclamation Service?

Mr. FINNEY. I mean that contract—form of contract—proposed to be entered into with this electric company was written by some one in the Reclamation Service. They were interested in having the contract executed and approved, because it would give them water from Lake Tahoe for the Truckee-Carson irrigation project, and they had been moving for several years to the end of obtaining this water, either by condemnation proceedings or purchase or compromise, like this is.

Mr. VERTREES. Now, Mr. Finney, I will pass to the question of cooperative certificates. There has been a question made about the action of the Secretary with respect to cooperative certificates, and the denial of their validity. I wish you would state to the committee just what happened with reference to them in the Secretary's office.

Mr. FINNEY. Early in May, 1909, the Secretary had determined the question of entering upon a reclamation project in Grant Valley, Colorado, and it was found that a tentative contract or arrangement had been entered into by the Reclamation Service, with the approval of Secretary Garfield, and the local Water Users' Association, for the construction of what is known as the Highland Canal in that valley; the scheme was for the water users' association, or the people, to put up a certain amount of cash and a certain amount of work against an allotment by the Government. For the money and work subscribed by the people, what were known as cooperative certificates were to be issued, and these certificates were to be received in payment of water rights.

Mr. VERTREES. Now, let me interrupt the statement there. Going back to that time when it began; I wish to know whether or not it was represented to the department, or was the understanding based upon the statement of the Reclamation Service, that there were not funds available at that time for taking up more work?

Mr. FINNEY. Yes, sir.

Mr. VERTREES. And that given as one of the reasons for resorting to this cooperative certificate device?

Mr. FINNEY. Yes; that reason was given by Mr. Davis, acting director of the Reclamation Service, in a letter addressed to the Secretary, which I had before me when I prepared the matter for reference to the Attorney-General.

Mr. VERTREES. Can you furnish us with a copy of that letter?

Mr. FINNEY. Yes; there are two copies here. The letter to which I just referred was one of May 5, 1909, addressed to the Secretary of the Interior, signed A. P. Davis, acting director, and the statement that I had particular reference to was:

From every point of view the project is a very feasible and desirable one to carry out under the provisions of the reclamation act. The one tangible objection to undertaking it is a very strong one, namely, the lack of funds. The number and magnitude of the projects already taken up will absorb the available funds for some time to come.

Mr. VERTREES. That letter is dated what?

Mr. FINNEY. May 5, 1909.

Mr. VERTREES. And written by Mr. Davis or Mr. Newell?
Mr. FINNEY. Mr. A. P. Davis, Acting Director of the Reclamation Service.

Mr. VERTREES. To whom?

Mr. FINNEY. To the Secretary of the Interior.

Mr. VERTREES. I wish the whole letter to go into the record.

The CHAIRMAN. It is admitted.

(The letter is as follows:)

DEPARTMENT OF THE INTERIOR,
UNITED STATES RECLAMATION SERVICE,
OFFICE OF THE DIRECTOR,
Washington, D. C., May 5, 1909.

The SECRETARY OF THE INTERIOR.

SIR: In accordance with your request to submit recommendation regarding the feasibility of proceeding with the construction of the irrigation project in Grand Valley in the neighborhood of Grand Junction, I beg leave to submit the following for your consideration:

In another letter of even date the various steps in connection with this project are set forth and the dates are given.

Preliminary surveys in this valley were made in 1903, and a board of engineers on examination reported a feasible project and recommended further surveys. Owing to a desire of a portion of the landowners to construct this project under the district system no further surveys were made at that time.

In 1908, after many unsuccessful attempts to construct the project by private or district enterprise, an appeal was made to the Reclamation Service to take up the project, and surveys were made which have demonstrated beyond question the financial feasibility of the project.

No other point is known in the reclamation States where an irrigation project presents more favorable features from a physical point of view, and it is believed that money invested under the provisions of the reclamation act would be returned with a promptness and certainty not surpassed under any project.

The alleged desire of certain private interests to now construct the project is disputed by their long neglect to do so, and there is practically no desire on the part of the landowners to have it done in this manner. They have, with practical unanimity, expressed a preference to wait several years and have the project carried out by the Reclamation Service.

From every point of view the project is a very feasible and desirable one to carry out under the provisions of the reclamation act. The one tangible objection to undertaking it is a very strong one, namely, the lack of funds. The number and magnitude of the projects already taken up will absorb the available funds for some time to come.

There is nothing in the present situation, however, that requires any large investment of funds until they are conveniently available in the reclamation fund, and however this may be, it appears that the department is definitely committed by the contract of February 25 to allot and expend a sum equal to that raised by the local association up to the limit of \$125,000.

It is respectfully recommended that in view of the said contract the work of construction and the acquisition of right of way, as authorized by the department on March 27, be resumed.

Very respectfully,

A. P. DAVIS, Acting Director.

Mr. VERTREES. Was any letter written about that time by Mr. Davis or Mr. Newell, the director, with reference to the fact that there were no funds available, and if so, to whom was that letter written, and to what project does it refer?

Mr. FINNEY. There was a letter written by Director Newell to a committee representing some land holders in Malheur County, Oreg. This letter was dated February 24, 1908, and says:

The condition of the reclamation fund will not admit of taking up more work at the present time, or until many details now in hand are more nearly completed. I shall bear in mind this portion of the former Malheur project, and if in the future it should become practicable, the question of taking up such a project will be carefully considered.

Mr. VERTREES. You have now read merely an extract from the letter there. I wish, Mr. Chairman, to have the whole letter go in.

The CHAIRMAN. It is admitted.

(The letter is as follows:)

DEPARTMENT OF THE INTERIOR,
UNITED STATES RECLAMATION SERVICE,
Washington, D. C., February 24, 1908

Messrs. JAMES B. POWERS, E. J. PATCH, and A. R. WHITE,
Committee, Weiser, Idaho.

GENTLEMEN: I am in receipt of your letter, not dated, transmitting a petition of a number of landholders in Malheur County, Oreg., asking that this department consider the feasibility of constructing that part of the Malheur project lying on the north and west sides of the Malheur River and in the valley of Snake River.

The condition of the reclamation fund will not admit of taking up more work at the present time, or until many details now in hand are more nearly completed. I shall bear in mind this portion of the former Malheur project, and if in the future it should become practicable, the question of taking up such a project will be carefully considered.

This same petition has reached me through a number of different channels and replies have been prepared in general that the matter will be referred to our engineers in the field for further advice, although, as above stated, the money available will not justify our taking up new work in the near future. It is not necessary to send a large number of these petitions to government officials, as equal attention will be given to one letter as to a dozen; in fact, I think that it is somewhat of an annoyance to a busy man to be asked to look after certain details and then find that some one else has been asked to attend to the same matter. He naturally feels that he is not being treated fairly.

If, therefore, for reasons of your own, you choose to send the same request to a number of different persons, I suggest that you notify each man as to whom you have sent the paper, so that all may not waste time and energy in following the matter up.

Very truly, yours,

F. H. NEWELL, *Director.*

Mr. VERTREES. Then, if I understand you, Mr. Finney, at that time the representations both to the Secretary and to others applying, by Mr. Newell and Mr. Davis or by the Reclamation Service, were that there were no funds available for the purposes of extending projects or undertaking new projects?

Mr. FINNEY. That is the fact; and the letter of Mr. Davis of May 5, 1909, was before me in May, 1909, when Mr. Ballinger stated to me that he had doubts about the legality of the cooperative-certificate plan and proposed to take the opinion of the Attorney-General as to their legality.

Senator SUTHERLAND. Mr. Finney, do you know how much money was on hand belonging to the reclamation fund at that time?

Mr. FINNEY. I can not give the exact figures, Senator. There was some amount, a small amount, that had not been allotted.

Senator SUTHERLAND. But actually in the irrigation fund there were several million dollars, were there not?

Mr. FINNEY. I think there was quite a considerable amount, but I have heard that explained by Mr. Newell.

Mr. VERTREES. What is the explanation, Mr. Finney?

Mr. FINNEY. Well, he stated—

Mr. GRAHAM. You mean the explanation as to why it was not available?

Mr. FINNEY. As to why it was necessary to carry a reserve, Mr. Graham.

Mr. VERTREES. That is simply another way of stating it was not available, I take it?

Mr. FINNEY. Yes; having so many projects under construction, and large structures like the Shoshone and Roosevelt dams, he said it was necessary to have an emergency fund to use in case of a sudden accident, and he cited Shoshone dam as an illustration of that.

Senator SUTHERLAND. I am not speaking, Mr. Finney, of the reserve fund. But independently of the reserve fund there was a large amount of money to the credit of the Reclamation Service?

Mr. FINNEY. I do not so understand it, Senator. I understand that everything that could be safely spared had been actually allotted to existing projects.

Senator SUTHERLAND. It might have been allotted, but had not been expended?

Mr. FINNEY. No; it had not been expended, but it had been allotted.

Senator SUTHERLAND. The money was on hand?

Mr. FINNEY. Yes, sir; there was money on hand.

Senator SUTHERLAND. Now, as a matter of fact, the projects that were contemplated amounted to forty or fifty million dollars?

Mr. FINNEY. Yes, sir; and more than that.

Senator SUTHERLAND. Probably not more than seven or eight million dollars on hand?

Mr. FINNEY. Yes, sir.

Senator SUTHERLAND. And there was something like that amount of money on hand at the time these cooperative certificates were issued?

Mr. FINNEY. That is true.

Senator SUTHERLAND. That amount of money was on hand to meet expenditures of that character or any other expenditures which might have been made?

Mr. FINNEY. Yes, sir.

Senator PURCELL. After it has been allotted can you take from one fund and put it into another, from one allotment to another?

Mr. FINNEY. The Secretary would have authority to change the allotment, you mean?

Senator PURCELL. From one allotment to another.

Mr. FINNEY. Yes; but it would be a very unusual thing to do, because it would cripple or hamper that project, and result in criticism from that particular project; so that, as a rule, allotments when once made are not disturbed.

The Grand Valley was a new proposition for which no large working allotment had been made. This proposition was to have the people put up. They had volunteered to put up \$90,000 in money and \$40,000 worth of work, and asked the Government to allot \$150,000, I think, to begin the work. Secretary Ballinger was desirous of constructing the project, as I understood, but he had doubts as to the legality of issuing this paper and directed me to prepare the matter for the submission to the Attorney-General for an opinion, which I did. I prepared a letter of 18 or 20 pages long, in which I endeavored to set forth fully the facts, and accompanied it by various exhibits and regulations and copies of certificates and things designed to enlighten the Attorney-General. I said in that letter that there were no available funds in the reclamation fund, no available funds, or something like that, and I based that statement on this letter of May 5 signed by Mr. Davis. I mention that simply because there was

some criticism made of that statement later. The matter went to the Attorney-General on May 26, 1909, and he rendered an opinion holding that the cooperative certificates were illegal.

The CHAIRMAN. Was that the Attorney-General of the Interior Department?

Mr. FINNEY. No, sir; the Attorney-General of the United States, Mr. Wickersham.

The CHAIRMAN. And that letter of submission, that letter calling attention to the fact and submitting the case to the Attorney-General, is that in evidence?

Mr. FINNEY. I think that has been introduced, Senator.

Mr. VERTREES. I here call your attention to a letter addressed to the Attorney-General dated May 18, 1909, signed by Mr. Ballinger, the Secretary, which appears on page 1566 of the record, and ask you if that is the statement that you say you prepared under Mr. Ballinger's direction to go to the Attorney-General?

Mr. FINNEY. Yes, sir; that is the letter or a copy of it?

Mr. VERTREES. Now, is the paper which follows it immediately and begins on page 1570 the opinion of the Attorney-General? Is that the opinion of the Attorney-General on that subject?

Mr. FINNEY. Yes; the statement of May 26 on that subject.

Mr. VERTREES. Now, you prepared that case under the direction of the Secretary; did he tell you what to put in it or just give you general instructions to prepare a proper case?

Mr. FINNEY. He simply told me he desired the Attorney-General's opinion upon that subject and for me to prepare the case for submission.

Mr. VERTREES. And you did so and submitted it to him?

Mr. FINNEY. Yes, sir.

Mr. VERTREES. And he signed it?

Mr. FINNEY. Yes, sir.

Mr. VERTREES. And it went to the Attorney-General?

Mr. FINNEY. It did.

Mr. VERTREES. With the result that he gave the opinion you have stated, dated May 26, 1909?

Mr. FINNEY. Yes, sir.

Mr. VERTREES. Then what happened?

Mr. FINNEY. A short time afterwards Mr. Newell came down to the office and was discussing the Attorney-General's opinion and said that he thought if the case had been fairly presented, the opinion might have been different; I asked him in what respect it was not fair, and he stated that there were no available moneys in the reclamation fund. I said, "Mr. Newell, I prepared that letter for the Secretary's signature, and I understand the statement to be correct." He seemed a little bit confused after that. I suppose because of the criticism, but later on he renewed his objections that if the Reclamation Bureau had been allowed to present the matter that possibly the opinion might have been different. Later in the summer it was agreed that another case should be submitted to the Attorney-General involving the North Platte, Nebraska, project, or rather a lateral district of the North Platte project. I felt a little delicate about preparing the letter myself, and asked permission of the Secretary to send it over to the Reclamation Service and let them prepare the matter further for submission.

They prepared a letter transmitting the question again to the Attorney-General. When it came over to our department it came to my hands, and I took it to Mr. Lawler and told him that I did not want to have anything to do with it, that I thought I had been reflected on. Mr. Lawler read it over and said he wanted a more concise statement of facts—they had mixed facts and law and argument altogether—and he wanted a more concise statement of facts to go to the Attorney-General. I told him of the criticism that had been made of the first letter and advised him to send the thing up just as they had it. The outcome of it was finally he prepared a statement of facts himself and transmitted it to the Attorney-General, but sent with it the letters prepared in the Reclamation Service, so that the Attorney-General had before him——

Mr. VERTREES. Now, I here call your attention to a letter dated July 24, 1909, signed F. H. Newell, director, addressed to the Secretary of the Interior, which appears on page 1576 of the record, and ask you if that is the letter to which you have just referred, which was intended to again take the opinion of the Attorney-General?

Mr. FINNEY. That letter on page 1576, addressed to the Secretary July 24, 1909, signed by Mr. Newell, is the letter to which I had reference.

Mr. VERTREES. What is the next document which follows?

Mr. FINNEY. On page 1581 is a letter signed by Mr. Bien, acting director, on the same subject.

Mr. VERTREES. What is the next document?

Mr. FINNEY. The next document is the letter from Frank Pierce, acting secretary to the Attorney-General, advising him that there has been submitted to the Attorney-General's office a statement of facts covering the North Platte project, Nebraska, in pursuance of Senator Burkett's desires.

Mr. VERTREES. Well, what is the next document?

Mr. FINNEY. The next document is on page 1582, a short letter of Frank Pierce, acting secretary to the Attorney-General, transmitting statements of facts covering the cooperative plan of the Reclamation Service with special reference to the North Platte project. Then follows the document, tables, statements of fact relative to the North Platte reclamation project.

Mr. VERTREES. By whom was that statement signed?

Mr. FINNEY. That statement of fact is not signed.

Mr. VERTREES. By whom was it made?

Mr. FINNEY. I presume it was the one prepared by Mr. Lawler.

Mr. VERTREES. State whether or not all these documents went to the Attorney-General and were before him when he gave that second opinion?

Mr. FINNEY. They all went to the Attorney-General. They were listed as exhibits to Mr. Pierce's letter of August 1, 1909. On September 8, 1909, the Attorney-General rendered an opinion, found on page 1583, wherein he reaffirms his former opinion as to the legality of the certificates.

Mr. VERTREES. I find on page 1585 of the record a communication dated November 11, 1909, addressed to the Secretary of the Interior and signed R. J. Tracewell, comptroller. Please explain what that is and how that came to be given?

Mr. FINNEY. There were many thousand dollars' worth of these cooperative certificates in the hands of the settlers on the various projects. The Attorney-General had said, while this paper could not be received in payment of water-right charges, it represented—it was evidence of work done for the United States, and that in all justice it should be paid, and he thought it could be paid as for work done. So, after the second opinion of the Attorney-General, the Secretary directed the Reclamation Service to present a method for the retirement of these certificates by payments out of the reclamation fund. Mr. Webster, one of the fiscal officers of the Reclamation Service, consulted with me in regard to the matter, and we agreed upon a tentative plan, and that it should be submitted to the comptroller for his opinion. We did not want to make any payments until there had been a ruling by the Comptroller of the Treasury. So, as a result, a paper was prepared in the Reclamation Service for the signature of the Secretary, reciting the facts pertaining to the transaction, addressed to the comptroller, and sent over for the Secretary's signature.

Mr. VERTREES. Does that paper appear in the record or in the opinion of the comptroller?

Mr. FINNEY. There are some quotations from it in the comptroller's opinion, but it is not here in full. That letter I initialed, and it was presented to Secretary Ballinger for signature, signed by him, and sent to the comptroller, and upon that the comptroller rendered this opinion of November 11, 1909.

The CHAIRMAN. Is that letter in the record?

Mr. FINNEY. The comptroller's opinion is in the record.

Mr. VERTREES. The comptroller's opinion is in the record, but the letter is not.

The CHAIRMAN. But this letter to which you referred?

Mr. FINNEY. No, sir; that is not in the record. I have no copy of that here.

Mr. VERTREES. I will ask permission to file it at the next meeting.

The CHAIRMAN. I would suggest that a copy of that be filed in the record.

Mr. VERTREES. Mr. Finney has none with him now.

The CHAIRMAN. That can be filed nunc pro tunc.

Senator PURCELL. What was his opinion?

Mr. FINNEY. It is a very lengthy one, Senator, but in the course of the opinion he also decides that these cooperative certificates are illegal.

Senator PURCELL. Illegal?

Mr. FINNEY. Yes, sir.

Mr. VERTREES. Is there any other matter or any other thing with reference to these certificates that might be stated, that you know?

Mr. FINNEY. No; only so far as I personally was concerned and so far as Secretary Ballinger was concerned from anything that I heard him say or saw him do; there was no desire whatever to upset any previous practice or ruling; it was simply done to find out the law. He wanted to know what the law permitted to be done and govern himself accordingly. There was no attempt to influence the Attorney-General or anyone in the rendition of that opinion. The letter was prepared in good faith and thought to be a fair statement of the facts.

Senator SUTHERLAND. Mr. Finney, I have not read the Attorney-General's opinion, but perhaps you could tell me. Is it based wholly upon the grounds that there were no available funds in the treasury of the Reclamation Service?

Mr. FINNEY. Oh, no; the principal basis of the opinion is that the law creating the reclamation bureaus and providing for the reclamation of arid lands provides that the irrigation work should be constructed from the proceeds from the sale of public lands which are created a fund for that purpose. And, as I understand his opinion, the works can only be constructed out of money in the reclamation fund. He says he reached the conclusion that payments must be made in cash and that the cash must come from the reclamation fund.

Senator PURCELL. How do these people get their pay for the work?

Mr. FINNEY. These people who have the cooperative certificates?

Senator PURCELL. Yes.

Mr. FINNEY. The plan, Senator, is to accept these certificates as evidence that the Government owes for the amount on the face of the certificate, and we propose to pay them cash out of the reclamation fund.

Mr. VERTREES. I will pass now to another question, one which relates to what is known as the Cale bill. If you know anything about the Cale bill, state what you know about that.

Mr. FINNEY. During the winter of 1907-8 there was considerable discussion in regard to Alaska coal law of 1904 and a number of Alaskans were in Washington with the idea of getting some remedial legislation. Mr. D. C. McKenzie was one of them, and he came to the Land Office, and Commissioner Ballinger sent him to me presumably because I was on the mineral work there. I talked with him about the law. One of the principal causes of complaint was the maximum size of the claim, 160 acres, and 640 acres for an association, which McKenzie and the others said was too small to work in Alaska. Mr. McKenzie told me that the Alaska people were going to endeavor to secure legislation from Congress on the coal situation, and said that he was going to try to get Delegate Cale to introduce a bill, and asked whether I would frame up for them a rough draft of a bill. I told him that I had no objections to doing it as a favor, but that it could not be done officially, and he left. I consulted with Mr. Ballinger, and Mr. Ballinger said that he was not certain whether it was advisable for our office to give out a draft of a bill, because it might be construed as a sort of semiofficial approval in advance of a proposed measure. But he would see Secretary Garfield and find out whether he thought there was any objection to giving them this draft of the bill. I wrote up a rough draft of a very short bill. It was substantially as paragraph 8 of the bill afterwards introduced and known as the Cale bill, and also contained provisions of section 7 of that bill as to working the coal, and the maximum amount which could be included in a consolidated claim was fixed at 1,920 acres—twelve claims.

The CHAIRMAN. How many acres?

Mr. FINNEY. One thousand nine hundred and twenty acres—twelve claims. Commissioner Ballinger looked over the matter, looked over the rough draft that I had prepared—it was just a type-written draft—and told me not to give it to McKenzie until he had secured permission from the Secretary. A few days later he told me

that he had secured permission to give McKenzie this rough draft unofficially. I turned it over to McKenzie, and later on the Cale bill was introduced, and, as I said a moment ago, sections 7 and 8 were substantially like the rough draft which had been prepared under Commissioner Ballinger's supervision.

Mr. VERTREES. It was prepared by you under the supervision and direction, or rather after consultation with Mr. Ballinger, and under the circumstances you have related?

Mr. FINNEY. Yes, sir.

Mr. VERTREES. Did you attend the hearings on the Cale bill?

Mr. FINNEY. No, sir; I did not.

Mr. VERTREES. Did that bill pass?

Mr. FINNEY. No, sir. The net outcome of the winter's work was the act which finally passed May 28, 1908?

Mr. VERTREES. The bill of May 28, 1908?

Mr. FINNEY. Yes, sir.

Mr. VERTREES. Mr. Ballinger had retired from the office of commissioner on March 4, 1908?

Mr. FINNEY. Yes; the act of May 28, 1908, came down for report when he was out of office. Mr. Dennett was commissioner and Mr. Garfield was Secretary.

Mr. VERTREES. Now, while we are on that question of coal and coal bills, I wish you would explain to the committee what the rules and regulations or laws relating to mineral claims in forest reserves are. I wish to get before them just in what way they affect or obstruct the action of miners and claimants in a forest reserve.

Mr. FINNEY. The rules obstruct them, you mean?

Mr. VERTREES. What are the rules relating to mineral claims in forest reserves?

Mr. FINNEY. Why, under the act of June 4, 1897, relating to forest reserves, mineral lands in national forests are subject to exploration, purchase, and entry under the mining laws, just as they are outside, but there is more or less complaint from miners as to being hampered in the development of their claims.

Mr. VERTREES. Is that because of the rules of the Forest Service?

Mr. FINNEY. Yes, sir, largely; because they have to have permits for various things that are needed in connection with mining—miners' cabins, telephone lines, and roads.

Mr. VERTREES. And trails?

Mr. FINNEY. Yes; trails and things of that sort.

Mr. VERTREES. Tramways?

Mr. FINNEY. Yes; tramways.

Mr. VERTREES. From whom do they get these permits?

Mr. FINNEY. Ordinarily from the forest supervisor, but I think certain of them have to be submitted to the Washington office for approval. I would not be sure of that, however.

Mr. VERTREES. What about permits for cutting timber for firewood? Does he have to get a permit to do that?

Mr. FINNEY. Oh, yes; outside of his own claim he would not be allowed to cut any timber, I understand, without a permit.

Mr. VERTREES. I am speaking of mineral claims in forest reserves now.

Mr. FINNEY. Yes, sir; outside of his own location.

Mr. VERTREES. What about timber for building and mining purposes, the same?

Mr. FINNEY. He would have to have a permit for that unless it was on his own mining location.

Mr. VERTREES. As a practical proposition, then, as I understand you, it is a subject of very great complaint and obstruction in the mining of minerals in the forest reserve?

The CHAIRMAN. Mr. Vertrees, will you allow me to ask him a question in this connection? I want to see whether I am right or not. My impression is that outside of a forest reserve a miner who starts in and discovers a mineral claim has the right to take timber from the public land adjoining it to develop his claim?

Mr. FINNEY. Yes, sir; under the act of June 3, 1878.

The CHAIRMAN. Without any permit?

Mr. FINNEY. Without any permit.

The CHAIRMAN. Outside of the forest reserve a miner can go in, discover, develop, and operate his claim, and take the necessary timber from the public land adjoining it to develop the claims, without any permit or license?

Mr. FINNEY. Yes, sir.

The CHAIRMAN. That is all, Mr. Vertrees.

Senator SUTHERLAND. Before Mr. Vertrees begins again—

Mr. VERTREES. Will you let me give a reference he asked me for? Page 7758, Mr. Finney. Now, Senator.

Senator SUTHERLAND. Does the forester or the supervisor undertake to exercise supervision over the locations of these mining claims within the forest reserve—that is, does the forester claim the right to determine whether or not the lands which the miner seeks to appropriate are valuable for mineral purposes?

Mr. FINNEY. In a sense, they do, Senator. They examine locations, as I understand it, and if in the opinion of the forester there are not valuable mineral claims—not valuable for minerals—they proceed to sell the timber, for instance, on that claim, regardless of the location. If it is an entered or applied-for claim, they have to make report to the General Land Office as to the character, and the matter, if tried out in a hearing.

Senator SUTHERLAND. Well, but the supervisor claims the right, does he not, to say in the first instance to the prospector: "This is not mineral land and we will not permit you to take possession of it for the work?"

Mr. FINNEY. I do not know that they go that far except in these administrative sites. They claim the right to make withdrawals for administrative sites from all forms of entry or location.

Senator SUTHERLAND. How far do they go in the way of exercising control over the location of mining claims?

Mr. FINNEY. They go to the extent of taking possession of the location if in their opinion it is invalidated. If they want it for a ranger site, they want to cut the timber off of it. They go on regardless of the location.

Senator SUTHERLAND. That is if the supervisor determines that the land is not valuable for mineral purposes, he exercises the right to take control of it?

Mr. FINNEY. That is my understanding; yes, sir.

Senator SUTHERLAND. And oust the prospector?

Mr. FINNEY. Yes, sir.

Senator SUTHERLAND. Now, when a prospector takes land on the public domain outside of the forest reserve, the determination of the question as to whether or not it is mineral is primarily with him?

Mr. FINNEY. The question rests with him; yes.

Senator SUTHERLAND. If the indications are such that he, as a prospector, feels justified in expending his money upon it, with the hope of developing a mine, then he has the right to do that?

Mr. FINNEY. That is right; yes, sir.

Senator SUTHERLAND. But in the administration of matters in the forest reserve that rule is reversed and the supervisor claims the right of primary determination on that question?

Mr. FINNEY. Yes, sir.

Senator SUTHERLAND. And has not that situation led to a great deal of objection and criticism on the part of mining prospectors in the Rocky Mountain States?

Mr. FINNEY. It has. I have a letter here that came to my desk yesterday where the forest supervisor undertakes to enter into an agreement with a man who has a mining location in Idaho, that he will be permitted to work his claim, provided he will eliminate that part of his claim in conflict with the Pinchot administrative site.

Senator SUTHERLAND. What portion of the claim was involved in that contest?

Mr. VERTREES. Does he call it the Pinchot administrative site?

Mr. FINNEY. That is what the agreement calls it; yes, sir.

Mr. VERTREES. I would like, Mr. Chairman, to put in evidence the letter and agreement to show the actual working of matters under the Forest Service.

Mr. FINNEY. It embraces a tract of approximately 1 acre in the northwest quarter of section 15, withdrawn from all forms of entry as Pinchot administrative site for the Government.

The CHAIRMAN. That is admitted.

(The letter and agreement referred to are as follows:)

APRIL 8, 1910.

Hon. R. A. BALLINGER,
Secretary of the Interior, Washington, D. C.

DEAR SIR: At the request of Mr. W. W. Ferrell, of Ferrell, Idaho, we are enclosing you copy of an agreement in writing between the forest supervisor and Mr. Ferrell in relation to a mining claim within a forest reserve. The agreement may be of service in the pending investigation of the administration of the Forest Service.

Mr. Ferrell and Mr. Sheehy located a mining claim and had men at work on the ground improving the same for mining purposes. While the men were so at work they were stopped by the superintendent and his assistant. We commenced a suit and had an injunction issued against the interference. The agreement was then made as a compromise. The agreement accomplished what we sought—non-interference with the work, without other cost or delay. But from a legal point, they had no right to interfere with the work or location of the claim. Their interference in this case was a sample of interference or meddling with other mining locations. We trust the agreement may be of some service to you.

Yours, respectfully,

KERNS & RYAN

This agreement made and entered into by and between W. W. Ferrell, party of the first part, and W. G. Weigle, forest supervisor, party of the second part, witnesseth:

Whereas on April 10, 1909, the party of the first part and one James Sheehy discovered and located the Forty-nine No. 3 lode mining claim and the Forty-nine No. 4 lode mining claim on the north side of the St. Joe River in section 15, township 45¹N., range 5 E., B. M.; and

Whereas the Forty-nine No. 4 lode mining claim aforesaid embraces a tract of land comprising approximately one acre in the northeast quarter of section 15 withdrawn from all forms of entry as Pinchot administrative site for the Government; and

Whereas the party of the first part and the said James Sheehy and one J. E. Peterson have commenced an action in the district court of the first judicial district to quiet the title of said Forty-nine No. 4 lode mining claim and the Pack Cask lode mining claim as against the defendants therein, W. G. Weigle and R. M. Debbitt, and it is the desire of the parties hereto to settle and compromise the said case and have recognized and determined the rights of the party of the first part and the said James Sheehy in and to said Forty-nine No. 3 and Forty-nine No. 4 lode mining claims as well as the title of the Government to the said Pinchot administrative site as being subject to no mineral locations or other entries of any kind:

Therefore it is mutually agreed that the party of the first part and his co-owners may proceed with the development of said Forty-nine No. 3 and Forty-nine No. 4 lode mining claims for mining purposes without let or hindrance upon the part of the party of the second part or his successor in office or any deputies under him or them, provided, however, that the party of the first part shall amend his mining claim, Forty-nine No. 4, in filing the location notice thereof, so as to specifically exclude from said claim the area covered by the Pinchot administrative site; and provided further, that in such development work the party of the first part and his co-owners or his successors in interest will not interfere in any manner with the use and occupation of said Pinchot administrative site and the ingress and egress to and from the same.

It is further mutually agreed that the party of the second part will not in any manner lease or sub-let or attempt to lease or sub-let any portion of the surface of the said Forty-nine No. 3 mining claim or the said Forty-nine No. 4 lode mining claim as amended, or in any manner aid or abet any interference with the possession of the party of the first part or his co-owners in said two mining claims, or in any manner encourage any trespass upon the possession of the party of the first part or his co-owners in said two mining claims.

It is further mutually agreed that nothing contained herein shall be construed as determining the validity of said Forty-nine No. 3 and Forty-nine No. 4 lode mining claims or as restricting or affecting the action of the party of the second part in examining and reporting upon said claims as may be necessary in the future.

In consideration of the premises it is hereby mutually agreed that the pending action in the district court shall be dismissed at the cost of the plaintiffs.

Witness our hands and seals this 31st day of May, 1909.

W. W. FERRELL. [SEAL.]
W. G. WEIGLE. [SEAL.]

Mr. VERTREES. How long did you say you were in the mineral division of the Land Office?

Mr. FINNEY. Eleven years.

Mr. VERTREES. In what capacity?

Mr. FINNEY. Examiner of claims and contests.

Mr. VERTREES. Are you familiar with the course of procedure there—that is, what must be done in order to obtain a mineral claim in the office, the steps taken?

Mr. FINNEY. Yes, sir.

Mr. VERTREES. I wish you would explain to the committee the procedure in the different divisions you call N, P, B, etc. Take it up at the beginning and explain the procedure.

Mr. FINNEY. Ordinarily the mineral and coal cases go directly to the mineral division, Division N, and are examined in the absence of objection, and if the proofs are found regular they are approved and come directly to B for the writing of the patent. If, however, there is a complaint or report adverse to the entry by a special agent, or if it is one of those entries within suspended areas where reports are required under the rules or instructions, it is passed to patent until after it has been clear listed by Division P, but after it has been so clear listed, if the objections are found to be not valid after hearing or investigation the cases are approved for patent, and then they

make up a list of approved cases on which they are described by number and date, and the cases and papers, together with this list, go down to Division B. I think they send them down at the end of every week, and they are taken up there by a corps of patent writers. Mineral patents and coal patents of Alaska are somewhat more complicated than the ordinary homestead patents by reason of the metes and bounds description and conflicts, so they have a corps of people who have had considerable experience in writing these mineral patents. They are taken up down there then and one of the patent writers prepares a rough draft of the patent from the plat and the field notes and the various papers which contain essential descriptions. This rough draft is then looked over and revised by another patent writer, or sometimes by two, we call them a board, and whenever corrections are found to be necessary they are made. Then a clear draft of the patent is written, prepared for the signature of the recorder. It then goes to the recorder for signature, and, after being signed, the seal of the Land Office is affixed to the patent and then the record of the patent—that is to say, an exact copy—is placed in a book called a patent record for preservation, and the patent is then ready for delivery. The title has passed from the United States.

The CHAIRMAN. It is signed by somebody in the name of the President, the President's name is affixed?

Mr. FINNEY. The actual signature; yes, and by the recorder also.

The CHAIRMAN. The President's signature is attached by a clerk.

Mr. FINNEY. Yes, sir; the President appoints both the recorder, who has charge of Division B, and the President's secretary to sign land patents. The recorder countersigns the patent, as I recall it, and then the President's secretary signs the President's name, and the patent is placed of record, and then it becomes a perfected instrument and the title has passed from the United States.

The CHAIRMAN. After it is recorded, whether delivered or not?

Mr. FINNEY. Yes; after it has been signed, sealed, and recorded it becomes a patent which has conveyed title under the decision of the Supreme Court in the Schurz case.

Mr. MADISON. Recorded where?

Mr. FINNEY. In the General Land Office. They keep a volume called patent records, where an exact copy of the patent is placed and preserved. That is not necessary, because—

Mr. MADISON. Then recording is deemed equivalent to delivery?

Mr. FINNEY. Yes, sir; it then becomes a record.

The CHAIRMAN. The title vests in the patentee without the delivery of the instrument to the patentee?

Mr. FINNEY. Yes; after the recording.

The CHAIRMAN. After it is recorded?

Mr. FINNEY. Yes, sir; because after it is recorded it then becomes a public record, and anyone can secure a certified copy upon the payment of the necessary fee.

Mr. MADISON. That is generally the rule of recording in an office where recording is authorized as equivalent to delivery.

Mr. GRAHAM. I think not.

Senator FLETCHER. Not always; it must be *prima facie*.

The CHAIRMAN. The rule is that a deed must be delivered before it takes effect, but that is not the case of the patent.

Mr. FINNEY. The Supreme Court has definitely decided the matter in the case of a land patent, the case of *United States v. Schurz*, 102 U. S.

Mr. MADISON. Senator Fletcher states the rule correctly as a matter of law, and as I understand it, and that is that the registration or recording of an instrument conveying real property is *prima facie* evidence of delivery and regarded as equivalent to delivery. It might be, of course, shown that as a matter of fact there was no real delivery; that it was intended as delivery.

Mr. GRAHAM. I think you will find the general law to be that even though the grantor executes the instrument and has it filed for record and recorded, and then takes possession of it, and keeps it under his control, the title does not pass until the instrument itself passes into the hands of the grantee, comes under control of the grantee, because the grantor so long as he retains the instrument has it in his power to destroy it altogether. Delivery, I think you will find, is essential, ordinarily, to the conveyance of a title.

Mr. MADISON. That is a proposition of law that none of us dispute, that delivery is, of course, essential. The question is as to whether recording does not amount to delivery, and that it is not ordinarily evidence of delivery. It will not help this matter to get into a discussion on that proposition. Mr. Finney has stated to us the rule in cases of this kind, and that is that recording of a patent is equivalent to delivery.

Mr. FINNEY. That is the rule in land cases, public-land cases.

Mr. GRAHAM. This is an exception I think.

Mr. VERTREES. And I understand your statement to be predicated upon the case of *United States v. Schurz* (102 U. S., 378)?

Mr. FINNEY. Yes, sir.

Mr. VERTREES. On the page that I have referred to.

The CHAIRMAN. The court has expressly decided it in that case.

Mr. VERTREES. How much time is ordinarily required, Mr. Finney, to get a patent through the office after it is ordered to be patented?

Mr. FINNEY. From thirty days to six weeks.

Mr. VERTREES. Do you know when those forms of patent which were prepared for some of the Cunningham claimants were prepared, about what date? Some of them were, as I understand.

Mr. FINNEY. I only know I was consulted with reference to the writing of one of these patents in the early part of January, 1908.

Mr. VERTREES. Mr. Finney, in a communication which is printed at page 269 of the Senate document, which is a letter from Mr. H. H. Schwartz to Mr. Carr, dated August 21, 1909, there appears this statement on page 271:—

I came very near getting a grouch to-day when Pierce ordered me not to take any "unfavorable action" on Siletz Indian "homesteads" until such time as Mr. Finney might return from his leave and digest a lot of papers and petitions, etc., sent to the judge and by him forwarded here. The thing I did not like was that Pierce refused to give us any written order in the premises. I told Judge Ballinger about three months ago that this Alaska business was badly loaded, and the judge told me some fellows got their ears so close to the ground that they could not hear anything. I tell you now that there is a worse load in this Siletz matter, and if it were a matter for my discretion I would not stop a day on the theory that any Oregonian will ever get a bill through Congress giving equitable relief and a \$15,000-each lot of homesteads to a lot of fellows who never lived on the land and claim it is not fit for a home. It is a mean man that won't sign a petition, and I know the judge will be deluged with petitions

and briefs and hard-luck stories. The all-sufficient answer is that the United States never drafted any man or woman into making a homestead upon land the applicant thought he could not live on at the time he made oath that he took the land in "good faith for the purpose of establishing a home."

Now, I wish to call your attention especially to that part——

Mr. MADISON. Just a moment, Mr. Vertrees. Where is that letter? I did not catch your citation?

Mr. FINNEY. It is page 271 of Senate document, I think.

Mr. VERTREES. Yes; it is on page 271 of Senate document. The particular matter to which I wish to direct your attention in that extract is the paragraph in which he says:

I tell you now there is a worse "load" in this Siletz matter, etc.

Now explain to the committee what the Siletz matter is and what that meant.

Mr. FINNEY. The Siletz is a former Indian reservation in the State of Oregon which was thrown open to homesteaders by Congress some years ago, and settlers went in there and filed homestead claims. The information that we have is that the ground is covered with a very valuable growth of timber, and most of it, or parts of it at least, are more valuable for timber than any other purpose. Our special agents—among them, I think, Jones, who has testified here—were directed to make investigations into these cases to ascertain whether the settlers were complying with the law as to residence and improvement and cultivation of their claims, and we had various adverse reports.

Some of those people were not complying with the homestead law, and that the entry should be canceled. We also had a number of contests instituted by private parties against the existing entries on the ground of nonresidence, and we were proceeding against them, and in some instances, after hearings had been had, we canceled the entries. Now, in the summer of 1909, when Mr. Ballinger was in the West, either in Seattle or Portland, there was filed with him a petition signed by a committee of three or four of those settlers who said they represented other entrymen in the Siletz Reservation, and setting forth the great hardships that they had undergone in settling up that country, and their equities, as they viewed them, and stating that a Member of Congress from their State was going to introduce a bill in Congress to confirm and validate their entries, and asking Mr. Ballinger to stay his hand and not cancel the claims upon those private contests, or government contests, until Congress should have an opportunity to act in the matter. Mr. Carr, Mr. Ballinger's private secretary, who was with him, bundled the petition and papers that came with it in an envelope and mailed it to me in Washington.

Mr. VERTREES. Where were they delivered to the judge?

Mr. FINNEY. They were evidently just handed to him.

Mr. VERTREES. I say where?

Mr. FINNEY. Either in Seattle or Portland.

Mr. VERTREES. Somewhere in the West?

Mr. FINNEY. Yes, sir. Mr. Carr sent them to me in a large envelope, addressed E. C. Finney, assistant to the secretary, Washington, D. C. At that time I happened to be off in Virginia on a fishing trip and the mail was forwarded to me in Virginia, and I returned the papers to the department with a little note addressed to Secretary Pierce, suggesting or asking him to have Schwartz defer action on

the cases until I could come back to Washington and look up the records and prepare something with regard to this petition; and evidently from this note or letter which you have read to me Mr. Pierce called Mr. Schwartz over and gave him verbal instructions to hold the matter up. At any rate, when I returned two weeks later I found the petition in the department unacted on. I went to the Land Office and got the number of pending entries involved in the contest and informed myself as well as I could about the situation and prepared a letter denying the petition. That letter was signed by Secretary Ballinger after his return from the West. I presume what Mr. Schwartz meant by the situation being "loaded" was that if we suspended the entries we would be charged by the Forest Service, or by somebody, with giving away valuable timber. I presume that is what he has reference to, but of course that is a mere assumption. I do not know of any other "load" in the situation. Those poor devils had been unable to live continuously upon their claim because of the rugged timbered land through that country, and they felt that they had equities. The department, under the law, could not give them patents in the face of private contests and the reports of our special agents, and we proceeded to cancel. Those people wanted us to withhold action until Congress acted, and we did not feel that we were justified in doing so.

The CHAIRMAN. Are those entries canceled now or are they alive yet?

Mr. FINNEY. Some have been canceled and some are pending. In three or four of them we have issued an order of cancellation, but they have gone into the local courts here in Washington and asked for a restraining order.

Mr. VERTREES. On what grounds have they asked for a restraining order?

Mr. FINNEY. I only know from the newspaper account; that was to the effect that First Assistant Secretary Pierce had issued a petition which would cancel those entries and that the parties claimed that Secretary Ballinger should have personally rendered a decision.

The CHAIRMAN. I want to say to the committee in this connection that my recollection is that a bill for the relief of those settlers is now pending before the Committee on Public Lands of the Senate. I will bring the bill over here.

Mr. FINNEY. I think you are correct about that, Mr. Chairman.

The CHAIRMAN. My impression is that the bill was introduced by Senator Chamberlain. I know that there is such a bill before the committee.

Mr. VERTREES. You stated, Mr. Finney, that you prepared a letter denying the petition, or refusing to sustain the action.

Mr. FINNEY. Yes, sir.

Mr. VERTREES. For the Secretary to sign.

Mr. FINNEY. Yes, sir.

Mr. VERTREES. And you stopped there. I would ask you whether or not the Secretary did sign it?

Mr. FINNEY. He signed it.

Mr. VERTREES. Have you a copy of that letter?

Mr. FINNEY. It is on file here with the committee. I have not a copy of it here. I sent the original file to the committee some time ago.

Mr. VERTREES. I would like——

The CHAIRMAN. We will hunt it up and have it put into the record at this place.

Mr. VERTREES. I would like to have that done, Mr. Chairman.

(The letter referred to is as follows:)

W. S. A.

E. C. F.

SEPTEMBER 9, 1909.

Messrs. W. B. MORSE, W. L. WELLS, and PAUL H. SROAT,
Portland, Oregon.

GENTLEMEN: I have given careful consideration to your petition of August 4, 1909, requesting me to suspend action upon all homestead claims in the former Siletz Reservation pending consideration by Congress of H. R. bill No. 11490, introduced by Honorable W. C. Hawley. I appreciate that the settlers have undergone many hardships and should receive as liberal treatment as is consistent with the laws enacted by Congress, but do not feel justified in suspending the operation of existing laws pending future consideration by Congress of proposed legislation changing their status. If I did so in this case, I would, in order to be consistent, be compelled to follow the same course in other instances, which might result in very seriously hampering the conduct of the public business so far as it relates to lands.

Furthermore, it must be borne in mind that Congress has enacted laws providing for the filing of contests upon certain conditions, and the awarding of certain benefits to those who successfully prosecute such contests and secure the cancellation of entries by showing noncompliance with law on the part of entrymen. I must, therefore, hold that I am not, under the circumstances, justified in granting the suspension prayed for.

Very respectfully,

R. A. BALLINGER, *Secretary*.

Mr. VERTREES. So that, in point of fact, there was no suspension of action at all other than the two weeks' delay incident to your absence from the city?

Mr. FINNEY. And the time it took to investigate the subject after my return.

Mr. VERTREES. But the result was a refusal to concede what the petitioners desired?

Mr. FINNEY. Yes, sir; and I did not know anything about this note of Schwartz's until after I saw this Senate document.

Mr. VERTREES. That seems to be a private letter to Mr. Carr?

Mr. FINNEY. So I was not actuated by any fear of the "loaded situation" in preparing the letter.

Mr. VERTREES. Was the situation "loaded" in any way?

Mr. FINNEY. Not that I know of.

Mr. VERTREES. Now, one question on another subject, and that is as to the Alaska coal withdrawals. How were the coal lands in Alaska withdrawn from patent, and when?

Mr. FINNEY. By order issued under direction of President Roosevelt November 12, 1906, which withdrew the lands—all coal lands in Alaska—from disposition, and also had the effect of suspending existing coal claims.

Mr. VERTREES. Was that done by the order which is addressed to the Secretary of the Interior, signed Theodore Roosevelt, dated November 7, 1906, and which appears on page 203 of Senate Document No. 248?

Mr. FINNEY. Yes, sir; that is my understanding. There are other letters with reference to the withdrawals on page 204, Senate document, signed by the Secretary and the commissioner.

Mr. VERTREES. Mr. Chairman, I wish the letter on page 203 to go in evidence as part of this record.

The CHAIRMAN. It is admitted. It is Exhibit A at the bottom of page 203.

Mr. VERTREES. Yes, sir.
(The letter is as follows:)

EXHIBIT A.

THE WHITE HOUSE,
Washington, November 7, 1906.

To the Secretary of the Interior:

In reference to your letter of the 7th instant, inclosing letter of the Acting Director of the United States Geological Survey of November 3, I direct that the proposed action in reference to the coal lands of Alaska be taken. I return the letter of the acting director herewith.

THEODORE ROOSEVELT.

[Indorsement on back.]

DEPARTMENT OF THE INTERIOR,
November 12, 1906.

Respectfully referred to the Commissioner of the General Land Office, who will take the steps necessary to carry the directions of the President into effect and report action to the department.

E. A. HITCHCOCK, *Secretary.*

Mr. VERTREES. Mr. Finney, is it necessary for any of these papers which appear on pages 204 and 205 to go in as explanatory in any way?

The CHAIRMAN. They ought to go in.

Mr. VERTREES. Yes, sir; I think so.

The CHAIRMAN. They ought to go in as to the execution of the order.

Mr. VERTREES. I will ask, Mr. Chairman, that all these exhibits and papers which are printed on pages 204 and 205 of the Senate Document 248 be printed as part of the record.

The CHAIRMAN. That order will be taken.

Mr. VERTREES. Should that other letter on page 206 go in? I do not think so, but still, if there is any doubt about it it had better go in.

Mr. FINNEY. Yes, sir; the letter marked "Exhibit B," on page 206, should go in because that is a letter from the survey.

Mr. VERTREES. I would ask that that be added also, Mr. Chairman—the letter on page 206 of Senate Document 208.

(The papers referred to are as follows:)

EXHIBIT A-1.

DEPARTMENT OF THE INTERIOR,
Washington, November 7, 1906.

The PRESIDENT:

I transmit herewith a copy of a letter of the 3d instant from the Acting Director of the Geological Survey, with the accompanying map, in which he has recommended that the matter of withdrawing coal lands from entry in the district of Alaska be brought to your attention.

He has stated that the reasons for withdrawing these coal lands from entry are fully as urgent as in the cases of the withdrawals in the Western States and Territories, and I have the honor to request, therefore, that you inform me of the action which you desire taken on the recommendation of the acting director that the order suspending coal entries be made to apply to the entire district of Alaska.

Very respectfully,

E. A. HITCHCOCK,
Secretary.

EXHIBIT A-2.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, November 13, 1906.

The SECRETARY OF THE INTERIOR.

SIR: I have your reference of November 12 of a letter from the President, of November 7, approving the recommendation of the Acting Director of the Geological Survey, of November 3, 1906, that all lands in the district of Alaska be withdrawn from filing or entry under the coal-land laws. You direct that the office take the steps necessary to carry the directions of the President into effect, and report the action taken.

In accordance therewith the following telegram has this day been sent to the local officers at Juneau:

"By Secretary's order November 12, 1906, all lands in the district of Alaska were withdrawn from filing and entry under the coal-land laws. Properly note your records and be governed accordingly."

Proper notations have been made on the records of this office.

The office wishes to call attention to the wording of the acting director's letter, in part, as follows:

"The reasons for withdrawing this coal from entry are fully as urgent as in case of that in the Western States and Territories, * * * and I therefore recommend that the order suspending coal entries be made to apply to the entire territory."

It is to be noted that the withdrawals of lands in the Western States and Territories extended to all forms of entry, while under the above instructions, as this office construes them, the lands in the district of Alaska will only be withdrawn from filing or entry under the coal-land laws. The office also has directed that no coal entry or filing now pending for lands in the district of Alaska shall be passed to patent, and this order will be maintained until otherwise instructed by the department.

I submit this in duplicate.

Very respectfully,

W. A. RICHARDS,
Commissioner.

DEPARTMENT OF THE INTERIOR,
November 27, 1906.

Respectfully returned to the Commissioner of the General Land Office with the statement that the telegram of November 13, 1906, to the local officers at Juneau, Alaska, should be modified so as to read that all of the public lands in Alaska on which "workable coal is known to occur" are hereby withdrawn from entry, filing, or selection under the public land laws until further ordered by the department.

E. A. HITCHCOCK,
Secretary.

T. R.

GENERAL LAND OFFICE,
December 1, 1906.

Respectfully referring to the conference with your department this morning and in accordance with the direction of the First Assistant Secretary, I return these papers without action for the purpose of being advised as definitely as possible what lands in Alaska the Geological Survey believes to contain workable coal, with a view of withdrawing such lands from all forms of entry, filing, or selection, and permitting the lands not so defined to be disposed of upon an affirmative showing that the lands do not contain workable coal.

W. A. RICHARDS,
Commissioner.
G. F. P.

DEPARTMENT OF THE INTERIOR,
December 18, 1906.

Respectfully returned to the Commissioner of the General Land Office, reference being had to the transmission on this date of data in regard to coal lands in Alaska, and reference being had also to departmental order of the 17th instant withdrawing public lands in Alaska from entry under the coal land law merely.

THOS. RYAN,
First Assistant Secretary.

EXHIBIT A-3.

DEPARTMENT OF THE INTERIOR,
Washington, December 17, 1906.

The COMMISSIONER OF THE GENERAL LAND OFFICE.

SIR: Referring to departmental order of July 26, 1906, and all subsequent orders withdrawing from entry, filing, or selection, under the coal and other land laws, the public lands in certain designated townships in various States and Territories in which townships the Director of the Geological Survey alleged "workable coal is known to occur," you are advised that all of said orders are hereby modified so as to provide for the withdrawal of "such lands from coal entry merely."

You will make this special and at once wire this modification to the local officers of the various land districts affected thereby.

You are also advised that departmental order of November 12, 1906, is hereby modified and is to be construed as a withdrawal of the public lands in Alaska "from coal entry merely," and you will at once wire the local officers at Juneau accordingly.

Very respectfully,

E. A. HITCHCOCK, Secretary.
T. R.

EXHIBIT B.

DEPARTMENT OF THE INTERIOR,
UNITED STATES GEOLOGICAL SURVEY,
Washington, D. C., November 3, 1906.

The SECRETARY OF THE INTERIOR,
Washington, D. C.

SIR: In further reference to department letter of September 20, No. 2898-1906, L. & R. Div., in reference to withdrawals of land from coal entry and continuing my reply thereto:

In previous recommendations no reference has been made to coal lands in Alaska. The coal and lignite deposits of that Territory are known to be of commercial value and much attention has been given to their investigation by this survey. The reasons for withdrawing this coal from entry are fully as urgent as in case of that in the Western States and Territories, and I therefore suggest that the matter be brought to the attention of the President. Since the land office surveys have not yet been generally extended over Alaska, the coal lands can not be designated by legal subdivision, and I therefore recommend that the order suspending coal entries be made to apply to the entire Territory.

I am sending with this a map of Alaska showing the distribution of coal and lignite so far as known, and also other mineral deposits, the economical development of which is dependent on a cheap fuel supply.

Very respectfully,

H. C. RIZER, Acting Director.

Approved.

E. A. HITCHCOCK, Secretary.

Mr. GRAHAM. For my own benefit, on page 205 I notice the initials "T. R." in two different places, and at one other place the name "Thomas Ryan." Does "T. R." stand for Thomas Ryan everywhere it appears?

Mr. FINNEY. I think that last "T. R." stands for Theodore Roosevelt. That is a modification, Mr. Graham, of the original order. It was taken to the President for an O. K.

Mr. GRAHAM. How about the first one at the top of page 205, "E. A. Hitchcock, Secretary," and the initials "T. R.?"

Now, I had no thought or nothing to lead me to believe that the Secretary had received an order of direction from the President to withdraw them. I was under the impression that he had consulted with the President or with the Cabinet, and that they had reached the conclusion that it was advisable to make those rewithdrawals pending the consideration of the subject by Congress, but I did not want to convey any impression that I thought or that I had any evidence that there was any direction given by anyone.

Mr. GRAHAM. Did not your answer make that clear yesterday where you say:

I thought it was probably the result of a conference with the President, or with members of the Cabinet, or something of that sort.

Would not that make your position pretty clear?

Mr. FINNEY. Possibly, but Judge Madison asked immediately after that—

Yet at the same time the President was insistent upon the matter, and he was acquiescing.

I did not want to convey the impression that I knew of any direction or that I had that impression.

Mr. MADISON. I gained the impression from the first portion of your testimony on that subject that perhaps Judge Ballinger entertained the view that no withdrawal could legally be made of the lands then under consideration.

Mr. FINNEY. Yes, sir.

Mr. MADISON. But that the President felt that the lands at least could be withdrawn temporarily and that the Secretary would have that authority?

Mr. FINNEY. I thought it was the result of a conference, and probably a mutual agreement as to the step which should be taken.

Mr. MADISON. I understand now, as I did yesterday, what your testimony was with regard to the matter, taking it in its entirety.

Mr. FINNEY. Yes, sir.

Mr. BRANDEIS. Mr. Chairman and gentlemen, there is a part of the cross-examination of Mr. Finney which I shall ask to defer for the same reasons as stated yesterday with regard to Mr. Pierce, and in part, also, Mr. Clement. I am able to go forward with the rest of the examination, and will be glad to do that. Mr. Finney, among your many duties in connection with the Department of the Interior has been that of acting practically as associate counsel in this investigation, has it not?

Mr. FINNEY. I have been present during the hearings and have endeavored to assist in bringing out the truth.

Mr. BRANDEIS. And you have from time to time, out of the fullness of your knowledge, advised Mr. Vertrees as to questions to be put and answers to be given, have you not?

Mr. FINNEY. I have not advised him as to the answers to be given; no, sir. I have, perhaps, made some suggestions as to questions relating to land laws and records of the department.

Mr. BRANDEIS. You have, in anticipation of this investigation and during it, familiarized yourself fully with the documents which have been put in evidence?

Mr. FINNEY. I am more or less familiar with them, yes, sir, by reason of my service in the department.

3. In computing the time within which notices of location may be filed under the preceding paragraph the time intervening between November 12, 1906, and August 1, 1907, will not be taken into consideration or counted, but such notices may be filed within one year from the date of location, exclusive of such time.

4. All qualified persons or associations of qualified persons who may have in good faith legally filed valid notices of location under the act of April 28, 1904, prior to November 12, 1906, and the bona fide qualified assignees of such persons may make entry and obtain patent under such notices within the time and in the manner prescribed by statute if they have not abandoned their right to do so.

5. In computing the time within which persons or associations of persons mentioned in the preceding paragraph may apply for patent, the time intervening between November 12, 1906, and the day on which they receive the written notices given by you as hereinafter required will not be considered or counted, and such applications may be made at any time within three years from the date on which such notices of location were filed, exclusive of such time.

6. You are directed to at once notify all persons or associations of persons who have filed notices of location in your office, including those who have pending applications for patent, and all persons or associations of persons holding as assignees under such locations who have notified you of such assignments, of their right to proceed in the manner herein prescribed and authorized, and to furnish them with a copy of these instructions. These notices must be served either personally or by registered mail, and you should carefully preserve with the record in each case the registry return receipt or other evidence of such notice.

7. In all cases where you publish notice of applications for entry or patent under the coal-land laws, or under any other law, you will at once mail a copy of said notice to a special agent assigned to duty in Alaska. Should said agent thereafter file in your office a protest against the validity of the location or claim embraced in any such application you will defer action upon such application until said protest is withdrawn or appropriate action is taken thereon.

Very respectfully,

R. A. BALLINGER,
Commissioner.

Approved, May 16, 1907.

JAMES RUDOLPH GARFIELD,
Secretary.

Mr. VERTREES. Now, Mr. Finney, is there anything in regard to these matters that I have not asked you about which you think should be stated. I ask you that general question because you are there in the office and know a great deal more about it than I do. I am through with my examination.

Mr. FINNEY. I do not recall anything. I would like to make just two corrections in the record, if the committee will permit me. In my testimony on page 3039 I am made to say that the Geological Survey had a lot of "extremely engaging data." That should be "stream-gauging data." Of course it is engaging, but that is what I said.

Mr. GRAHAM. Would it not work well either way?

Mr. FINNEY. It is engaging, yes, sir; but stream gauging is what I said. I would also like to correct the impression that Judge Madison seems to have had on page 3037 of the testimony, where appears this question:

Mr. MADISON. And that necessity, are we to understand, was the insistence of the President that it should be done—

That is with reference to these water-power sites.

Mr. MADISON. What was your answer?

Mr. FINNEY (reading):

Mr. FINNEY. Well, I do not know what the President told him.

Mr. MADISON. From what you said I gained the impression that you felt that that was so.

Mr. FINNEY. I thought that it was probably the result of a conference with the President, or with members of the Cabinet, or something of that sort.

Now, I had no thought or nothing to lead me to believe that the Secretary had received an order of direction from the President to withdraw them. I was under the impression that he had consulted with the President or with the Cabinet, and that they had reached the conclusion that it was advisable to make those withdrawals pending the consideration of the subject by Congress, but I did not want to convey any impression that I thought or that I had any evidence that there was any direction given by anyone.

Mr. GRAHAM. Did not your answer make that clear yesterday where you say:

I thought it was probably the result of a conference with the President, or with members of the Cabinet, or something of that sort.

Would not that make your position pretty clear?

Mr. FINNEY. Possibly, but Judge Madison asked immediately after that—

Yet at the same time the President was insistent upon the matter, and he was acquiescing.

I did not want to convey the impression that I knew of any direction or that I had that impression.

Mr. MADISON. I gained the impression from the first portion of your testimony on that subject that perhaps Judge Ballinger entertained the view that no withdrawal could legally be made of the lands then under consideration.

Mr. FINNEY. Yes, sir.

Mr. MADISON. But that the President felt that the lands at least could be withdrawn temporarily and that the Secretary would have that authority?

Mr. FINNEY. I thought it was the result of a conference, and probably a mutual agreement as to the step which should be taken.

Mr. MADISON. I understand now, as I did yesterday, what your testimony was with regard to the matter, taking it in its entirety.

Mr. FINNEY. Yes, sir.

Mr. BRANDEIS. Mr. Chairman and gentlemen, there is a part of the cross-examination of Mr. Finney which I shall ask to defer for the same reasons as stated yesterday with regard to Mr. Pierce, and in part, also, Mr. Clement. I am able to go forward with the rest of the examination, and will be glad to do that. Mr. Finney, among your many duties in connection with the Department of the Interior has been that of acting practically as associate counsel in this investigation, has it not?

Mr. FINNEY. I have been present during the hearings and have endeavored to assist in bringing out the truth.

Mr. BRANDEIS. And you have from time to time, out of the fullness of your knowledge, advised Mr. Vertrees as to questions to be put and answers to be given, have you not?

Mr. FINNEY. I have not advised him as to the answers to be given; no, sir. I have, perhaps, made some suggestions as to questions relating to land laws and records of the department.

Mr. BRANDEIS. You have, in anticipation of this investigation and during it, familiarized yourself fully with the documents which have been put in evidence?

Mr. FINNEY. I am more or less familiar with them, yes, sir, by reason of my service in the department.

Mr. BRANDEIS. And particularly, you are familiar with this document known as Senate Document 248?

Mr. FINNEY. I have read the Glavis letter and the replies very carefully. I can not say that I have read all of the exhibits.

Mr. BRANDEIS. Is there anybody whom you think associated with you who is more familiar than you are with these documents and exhibits?

Mr. FINNEY. Oh, there might be.

Mr. BRANDEIS. Well, is there anyone that you know of?

Mr. FINNEY. Yes, sir; I should say that Mr. Schwartz was more familiar with them.

Mr. BRANDEIS. You have made a considerable study of them?

Mr. FINNEY. I have looked them over quite frequently; yes, sir.

Mr. BRANDEIS. Now, I want to call your attention to the 4 pages of the conclusions of the Attorney-General—the last 4 pages of the summary and report, which occupies 75 pages in the Senate document, running from page 731 to page 805.

Mr. FINNEY. Yes, sir.

Mr. BRANDEIS. It is a fact, is it not, that in those conclusions which occupy pages 802, 803, 804, and 805 there are only two passages which have been italicized, the one being at the top of page 804, or near the top, and the second being near the top of page 805?

Mr. FINNEY. I think that is correct.

Mr. BRANDEIS. Now, turning to the passage which begins at the top of page 804 and includes that passage italicized on page 805, namely:

In this connection it may be pointed out, as an example of Glavis's habitual procrastination, that although, pursuant to his request of April 11, 1908, to forward to him all original papers relating to Alaska coal entries and declaratory statements upon his representation that the statute of limitations would prevent criminal prosecutions after the following October, and the cases must therefore be presented during the month of May, all such original papers and documents were, by direction of the General Land Office, immediately transmitted to him by the Juneau office, *no proceeding whatever was taken by him to bring these criminal prosecutions or to take any steps in connection therewith.*

Now, I wish you to point out in this record, which is comprised in Senate Document 248, any evidence showing or bearing upon the issue whether or not Glavis took any steps in connection with the suggested criminal proceedings.

Mr. FINNEY. Well, I did not write that summary in the first place, and I have not made any special search for that data.

Mr. BRANDEIS. I assume that your many duties do not extend to that of writing the Attorney-General's report?

Mr. FINNEY. I assume that the Attorney-General has something upon which to base his statement.

Mr. BRANDEIS. You assume it; but what I ask you is to point out in this record any evidence whatsoever bearing one way or the other upon that issue, whether or not Glavis took any steps in connection with the proceeding, the criminal proceedings, which he had himself suggested.

Mr. FINNEY. Well, I would have to take the time to read the record through before I could answer that question.

Mr. BRANDEIS. Well, do you know from that knowledge of this record which you possess at the present time of a single bit of evidence bearing upon that question?

Mr. FINNEY. I have a recollection of some; yes, sir.

Mr. BRANDEIS. Turn to it.

Mr. FINNEY. Either in the Senate document or in the testimony submitted, but I can not put my hand on it at the time.

Mr. BRANDEIS. What do you mean by the testimony submitted?

Mr. FINNEY. I mean this printed report of the testimony.

Mr. BRANDEIS. You mean the printed report of the testimony that we have been taking for a few months?

Mr. FINNEY. The testimony: yes, sir.

Mr. BRANDEIS. My question was, whether in Senate Document 248 there was, to your knowledge, a scintilla of evidence bearing upon the question whether or not Glavis took any steps in connection with the criminal proceedings which he suggested and which led to his sending the telegram of April 11?

Mr. FINNEY. I think there is something in the document on the subject. I do not know where I can turn to it right offhand.

Mr. BRANDEIS. Have you any recollection of any kind as to what it is? Perhaps I can aid you in turning to it if you can recollect.

Mr. FINNEY. My recollection is that Mr. Glavis was directed by Mr. Todd to submit a question connected with the criminal prosecution of these witnesses to the department in Washington, and that Mr. Glavis did not submit the letter. He prepared a letter but did not send it, saying that he intended to confer with Mr. Dennett when that officer reached the West.

Mr. BRANDEIS. Do you mean to say, Mr. Finney, that there is any such evidence in Senate Document 248?

Mr. FINNEY. My recollection is that there is a statement to that effect in there.

Mr. BRANDEIS. By whom?

Mr. FINNEY. I would not be certain. I think it is in Mr. Dennett's letter, possibly.

Mr. BRANDEIS. Mr. Dennett's letter? That is all?

Mr. FINNEY. That is all I recollect at present. I can not undertake to tell you everything that is in this book from memory.

Mr. BRANDEIS. Mr. Finney, I refer you to page 116 of Senate Document 248, which is Mr. Dennett's letter, and call your attention particularly to this paragraph, and ask you whether this is the paragraph you had in mind:

When Mr. Glavis was here in May, 1909, I called his attention to the fact that complaints were being made that these papers were not on file in the local land office, and therefore were not open to consultation. He cited the authority which was given the register and receiver at Juneau to send these papers to him and under which he held them. Upon my asking him whether they had been submitted to the grand jury, he said "No." I did not go into the matter further, presuming that he had ample time and was attending to the work, and certainly not recollecting the incidents relating to any particular claims on which he might have reported other than the Cunningham cases; upon my asking him why he had not returned them, he stated that he would do so shortly. Mr. Glavis still has, so I am informed, these papers. The privilege given Mr. Glavis to retain these papers for such a length of time is a most unusual one, and is mentioned as a further indication on the part of this office that nothing be put in the way of Mr. Glavis's full and free investigation.

Mr. FINNEY. Yes, sir; I may have had that in mind. I also had in mind, I presume, a part of the letter on page 115, where Glavis asks that certain papers be sent him, so that the case might be presented next month.

Mr. BRANDEIS. Now read the part that you had in mind, upon page 115.

Mr. FINNEY (reading):

Forward to me at Portland all original papers relating to Alaska coal cash entries and coal declaratory statements. Also wire local land office in Alaska to do likewise. Statute of limitations will prevent criminal prosecution after next October. The cases therefore must be presented next month. Only Simmonds and Christopher groups now involved, but all papers are necessary should others develop, as time would then be too limited to secure same.

Mr. VERTREES. Please give the date of that communication.

Mr. FINNEY. That appears to have been dated April the 11th, 1908. Then a little below is a copy, I presume, of a telegram sent by Mr. Glavis to the commissioner on April 13, 1908, as follows:

No entries of papers in this office except Cunningham group. Register and receiver, Juneau, telegraphed to-day to forward papers.

Mr. BRANDEIS. Now, what you have given on page 115 is not evidence in any way upon the question whether he had taken action, is it?

Mr. FINNEY. No; but it is evidence that he called for the papers and they were sent to him.

Mr. BRANDEIS. I did not ask you whether he called for the papers and they were sent, but what I ask you is, What evidence is there in this record that he had taken no steps whatsoever in connection with those proceedings?

Mr. FINNEY. That is a question that I can not answer, as I have told you, without making a careful study of this entire record. I would not rely upon my memory for that.

Mr. BRANDEIS. It is perfectly obvious, it it not, that there is nothing on page 115 of Dennett's letter which is evidence on the question of whether or not he had taken that action?

Mr. FINNEY. No; it is evidence bearing on this general subject.

Mr. BRANDEIS. I do not ask you that. I ask you whether there is any evidence on page 115 bearing upon the question whether or not he had taken action?

Mr. FINNEY. No, sir.

Mr. BRANDEIS. Now, on page 116, from which I read the passage to you, do you consider that evidence that he had taken no steps whatsoever in connection with the proposed criminal proceeding?

Mr. FINNEY. No; but it does show that up to the time of this conversation with Dennett no action had been taken or they had not been submitted to the grand jury.

Mr. BRANDEIS. Is that equivalent, in your opinion?

Mr. FINNEY. You asked me whether it showed whether any action had been taken, as I understood you.

Mr. BRANDEIS. No, sir. Will you please read the question, Mr. Reporter?

(The reporter read as follows:)

Mr. BRANDEIS. Now, on page 116, from which I read the passage to you, do you consider that evidence that he has taken no step whatsoever in connection with the proposed criminal proceedings?

Mr. FINNEY. I say, it shows he had taken no steps up to that time.

Mr. BRANDEIS. Let me put another question to you. You were here in the committee room when Mr. Christensen testified at great length to the preparation that he had made for having the question

submitted to the grand jury, as to whether Mr. Glavis and others should be indicted for embezzling papers, the property of the United States; they never were submitted to the grand jury. Do you say that all that evidence that Mr. Christensen collected with such diligence, in conference with the General Land Office, was not taking any step whatsoever in connection with the proposed criminal proceedings?

Mr. FINNEY. Oh, it was a preliminary step, but it was taking no step in the court.

Mr. BRANDEIS. Is there anything there about taking steps in the court?

Mr. FINNEY. No; the word "court" does not appear here.

Mr. BRANDEIS. As a matter of fact, was Mr. Glavis to take steps in court or was he to investigate the question as to whether steps ought to be taken and the matter be laid before the grand jury?

Mr. FINNEY. He was to make the preliminary investigation and, I presume, appear with his witnesses before the grand jury.

Mr. BRANDEIS. Only if it was directed, was it not?

Mr. FINNEY. I presume it would rest with the district attorney.

Mr. BRANDEIS. And, as a matter of fact, the district attorney did not want to take the responsibility, was that not so?

Mr. FINNEY. That was my understanding.

Mr. BRANDEIS. Then it was not evidence that he took no steps whatsoever in connection with the proposed investigation with a view to criminal proceedings?

Mr. FINNEY. No; it is not evidence that he took no steps whatsoever. It is evidence that he had not submitted anything to the grand jury at this time.

Mr. BRANDEIS. Just as the facts were developed—the opinion of the Attorney-General and Mr. Todd was evidence that the proceedings against Mr. Glavis and others for embezzlement of the public property and papers were not submitted to the grand jury, also because the Attorney-General and Mr. Parks thought it was undesirable, was it not?

Mr. FINNEY. I presume it was not submitted. I do not know anything, personally, about it.

Mr. VERTREES. Mr. Chairman, I wish now to interpose an objection. All of this cross-examination of the witness has been as to whether or not a certain opinion expressed by the Attorney-General was sustained by certain evidence that the Attorney-General had before him. Now, that is not at all relevant to anything I asked about, which were matters of fact. That really is committee work—for this committee to say eventually—whether the attorney's opinion was well-founded or ill-founded, and I only make the objection in the interest of time, whether or not the cross-examination should be relevant to the original examination. That is the only ground of my objection.

Senator FLINT. What do you think about that, Mr. Brandeis?

Mr. BRANDEIS. I think, perfectly clearly, that there ought not to be any limitation of it.

Senator FLINT. But what do you think about asking him to draw an inference from the Attorney-General's opinion?

Mr. BRANDEIS. You mean dividing the question?

Senator FLINT. Yes.

Mr. BRANDEIS. I think there is no way under the circumstances in which I can aid the committee more in the saving of time than to bring out from this extraordinary record the question what is in it and what is not in it when it bears on an important issue. Now, I think that is a matter which must be undertaken by one who knows about it. You have not the time to do it. If I undertook to read this to you every time I made a statement of it, you certainly would not want to have me continue to do it. Here is a witness who is a lawyer and who has been testifying, and has been in this case, as everybody knows, and knows more about it than anybody else, and I deem it of the greatest importance to show what basis there is or is not for the Attorney-General's statement, and I know of no way by which we can do it better.

The VICE-CHAIRMAN (Mr. McCall). It seems to the chair that it would perhaps save time to let Mr. Brandeis go ahead. I do not mean to say that—

Mr. OLMSTED. I do not agree with that at all. Here are some three or four thousand pages of testimony. If there is any evidence in there, if it is a matter of importance whether Mr. Glavis took steps or did not take steps, it is not for the witness to say that he did not take the steps; therefore, it is not cross-examination of him. I do not see that it is going to help this committee any to take the judgment of the witnesses as we pass along as to what is in this record before us or as to what it means. We have got to decide that. We are not going to rely upon the judgment of Mr. Finney or any other witness who is called as to what this evidence before us means. The committee has got to pass on that.

The VICE-CHAIRMAN. Mr. Brandeis is treating the witness as an expert on the records. He may or may not be an expert. That is for the committee to decide, but it seems to me that Mr. Brandeis may be able to exhaust the witness's knowledge upon that point quicker by letting him go ahead.

Mr. OLMSTED. I think it will come nearer exhausting the lives of the members of the committee.

Mr. BRANDEIS. Well, I am very sorry for that. That was all of that particular question. I am now going to another one.

The VICE-CHAIRMAN. I will call your attention, Mr. Brandeis, to page 760, where the Attorney-General himself gives some of the reasons upon which he bases this opinion.

Mr. BRANDEIS. Not on this point.

The VICE-CHAIRMAN. Well, in regard to Glavis's conduct in connection with these prosecutions—

Mr. BRANDEIS. Well, that on page 760, that is his summary.

The VICE-CHAIRMAN. That is where the Attorney-General summarizes that Glavis had not taken any action whatever with regard to those prosecutions that became outlawed in October, 1908.

Mr. BRANDEIS. I am very glad to have my attention called to that. You are referring to the testimony?

The VICE-CHAIRMAN. No; I am referring to Senate document.

Mr. BRANDEIS. In regard to that, I want to call your attention to the fact that the Attorney-General there recites the fact that some statements which are contained on page 115 in Mr. Dennett's letter, which this witness has read, and has stated, do not contain any evidence whatever tending to show that no steps were taken. You will

find that the Attorney-General did say there and did bring out "he has never taken any action whatever to bring these criminal prosecutions which he advised the Land Office must be brought before October, 1908, to escape the bar of the statute of limitations."

That is the Attorney-General's statement, and it is not based on any evidence. All the statements that he quotes are reciting that the papers were sent for and were supplied.

The VICE-CHAIRMAN. But he quotes here—

Mr. BRANDEIS. But the quotation is not a quotation as to the question whether anything was done, but is merely a quotation on the question that papers were sent for, and his request for papers was complied with—I mean from the Juneau office.

Mr. OLMSTED. What I meant was this: While the questions you are asking so far would be proper on cross-examination of the Attorney-General if he was on the stand, perhaps, it hardly seems to me to be the quickest way of getting at the matter—to question this witness and ask him to testify under oath as to what is contained in three or four thousand pages of testimony.

Mr. BRANDEIS. No; it is only a little over 700 pages. It is not what is in the testimony I am asking him; but I am asking him what is in the Senate document.

Mr. DENBY. Well, it is pretty hard to remember the contents of 700 pages, Mr. Brandeis.

Mr. BRANDEIS. Well; but a man who has studied that document, as Mr. Finney has studied it, as I have been obliged to study it. I think knows what is in it.

Mr. DENBY. Do you not really think you are trying to get from him conclusions that should be drawn by the committee?

Mr. BRANDEIS. I am not endeavoring to get any conclusions. I am doing what the chairman suggested.

The VICE-CHAIRMAN. I think all this supports the position of the chair that we would have saved time if we had permitted Mr. Brandeis to proceed.

Mr. GRAHAM. The Chairman's position is too sound to need discussion. Mr. Finney has qualified as an expert and Mr. Brandeis is merely asking him whether there is certain matters in this document. That is not a conclusion. He is getting the opinion of a man who qualifies as an expert on this document.

Mr. DENBY. Yes; but he has not qualified as a memory expert, Mr. Graham.

Mr. BRANDEIS. He not only stated he remembers, but he helped to make it—

Mr. FINNEY. I did not help write Mr. Dennett's letter, Mr. Graham.

Mr. GRAHAM. You helped to make up the circumstances or correspondence included in it.

Mr. MADISON. I think it is a novel proposition for counsel to call on another, even if they are lawyers, to tell the court or the committee what construction shall be placed upon the evidence.

Mr. BRANDEIS. I am not asking that any construction be placed on the evidence.

Senator SUTHERLAND. I have never understood that a matter that is contained in a printed document was a matter of expert opinion. It is a matter of actual knowledge, one way or the other—a matter of common knowledge.

Mr. GRAHAM. That is what he has inquired for, not his opinion about it, but what is his knowledge, or rather what is not his knowledge.

Senator SUTHERLAND. Anybody that reads printed matter, anybody with fair intelligence, ought to be able to tell what is in it. It is not a matter of expert opinion as to what is written in a document.

Mr. OLMSTED. If he says there is nothing there, it does not prove it; if it is there, we have to go into it.

Mr. BRANDEIS. I do not know, as a matter of fact, how you could get that before a committee better than by just that sort of a question. The question is not strictly expert, but quasi. It is a common thing in court, and in our courts we call a man who has gone through accounts and who has familiarized himself with the books and knows what is in them—he has made that a study. You ask that man, has he made that investigation, and is there in that book any entry of such and such an account, and he answers, "Yes, sir."

Mr. OLMSTED. You have read that book, haven't you, Mr. Brandeis?

Mr. BRANDEIS. I have read it.

Mr. OLMSTED. Then, if there is such evidence there you will have opportunity to point it out to us in your arguments.

Mr. BRANDEIS. Yes, sir; but I can not expect to make—I did not mean to make it personal—but I can not expect the committee to accept as a definite statement everything I make. When I find I have upon the stand some one who has made that investigation, I believe it is of the greatest aid to the committee—

Mr. OLMSTED. But he says he has not read it.

Mr. BRANDEIS. He says he has gone through it and he has read all the entries.

Mr. MADISON. How much of this book have you read?

Mr. FINNEY. I have read the letters addressed to the President by Mr. Glavis, Mr. Ballinger, Mr. Pierce, Mr. Dennett, and Mr. Schwartz. I have read some of the exhibits, but I don't know whether I read them all or not. I probably have examined most of the book.

Mr. JAMES. You did state you didn't believe any other person was more familiar with this record than yourself, except Mr. Schwartz, possibly.

Mr. FINNEY. He asked me whether there were others who were more familiar, and I said Mr. Schwartz was one.

Mr. MADISON. Is it a fact there are portions of the book you have not read?

Mr. FINNEY. I haven't read all of the Geological Survey reports which are incorporated in here.

Mr. MADISON. Do you claim to be able to state whether the things the Attorney-General refers to here are in this record?

Mr. FINNEY. Some of them I would be able to turn to immediately; others I could not recollect at all until I examined the documents.

Mr. MADISON. I mean this particular thing with regard to the submission of this matter to the grand jury—steps being taken by him. Do you know enough about that to be able to state to this committee, can you state, whether those things are in this book? You can answer that yes or no.

Mr. FINNEY. Not any more distinctly than I said to Mr. Brandeis, that I knew there was an allusion made in Dennett's letter in regard to it—

Mr. MADISON. You can answer that yes or no. Can you qualify as an expert on that, that you have sufficiently examined this to be

able to state whether or not the Attorney-General's statement is based upon facts contained in this record?

Mr. FINNEY. No; I did not expect to be called upon as a judge to sit in this case.

Senator FLINT. You have your views in reference to the matter of the statements made by the Attorney-General in regard to submitting this case to the grand jury for prosecution. Now, in that connection, can't you call our attention to that fact and say that the statement we get in this letter has no evidence to sustain it? Does not that submit the matter, then, to the committee?

Mr. BRANDEIS. I do not think it does. I think it submits it, of course.

Mr. MADISON. Well, it is a challenge to the other side, and ordinarily in court where there is a statement made by counsel, and where there is not a scintilla of evidence on this point, it is for the other fellow to show that it is there. We take the statement of reputable counsel for its due always upon matters of that kind if it is not in the record when you challenge the record in that way. The other party must produce it.

The VICE-CHAIRMAN. Suppose you proceed with this witness, Mr. Brandeis, until you have covered this point—

Mr. BRANDEIS. Perhaps I might. I will ask this question. Will you examine this record and if you find anywhere any evidence in the record, I mean in Senate Document 248, any evidence to sustain the statement of the Attorney-General that no steps whatever were taken in connection with this matter, will you call it to the attention of the committee and to my attention?

Mr. FINNEY. I will.

Mr. DENBY. Mr. Chairman, it seems to me that is going pretty far afield in the ordinary course of this proceeding.

Senator PURCELL. He has said he will do it.

Mr. JAMES. The committee ought to be enlightened. If he can find anything that Mr. Brandeis could not find, we ought to have it.

Mr. OLMSTED. Let him cross-examine him on the whole 700 pages.

Mr. BRANDEIS. Mr. Olmsted, fault was found yesterday because I did not cross-examine, and now they seem to find fault that I do. I think that is rather hard on me.

Now, Mr. Finney, it is a fact, is it not, that there is in the testimony here, taken in your presence and introduced in evidence in your presence, a large amount of testimony, documentary evidence, tending to show that steps were taken in connection with that investigation, as to the probability or desirability of bringing criminal proceedings, isn't there?

Mr. FINNEY. Some preliminary work was done; yes, sir.

Mr. BRANDEIS. Well, now, what evidence is there, if you recall, and what is the earliest in date?

Mr. FINNEY. I have to rely purely on my recollection. I recollect the testimony on the stand here of various visits made to Mr. Todd by Messrs. Glavis and Jones with reference to this matter.

Mr. BRANDEIS. The earliest appeared in the daily report of Glavis, appearing on page 861 under date of April 11, 1908, did it not?

The VICE-CHAIRMAN. Do you not think you can call all these matters to the attention of the committee in your argument? You are now asking for things that have specifically appeared, to show that Mr. Glavis did something in connection with this case.

Mr. BRANDEIS. No; I have another object.

The VICE-CHAIRMAN. Is not that directly in your favor?

Mr. BRANDEIS. It is, but I have another purpose in it and I do not think I should disclose that purpose.

Senator SUTHERLAND. Mr. Brandeis, let me ask you this question: Do you think it is a proper function of one witness to tell the court what another witness has testified to in a case?

Mr. BRANDEIS. I am not asking him what any witness has testified to. I am asking him what documents were in evidence.

Senator SUTHERLAND. Well, do you believe that it is a proper thing to ask a witness to state to the court or jury what documents have been admitted in evidence and what those documents show?

Mr. BRANDEIS. I am going to ask another question, and if you desire I will put it in another form.

Mr. Finney, is it not a fact that at the time of the preparation of the Attorney-General's opinion and also at the time of the preparation of the answers of Secretary Ballinger and Mr. Dennett and Mr. Schwartz and of Mr. Pierce, of which the Attorney-General makes a summary and report, that there was in the General Land Office and in the Seattle land office a large number of documents or documentary entries showing that proceedings had been taken—I mean steps had been taken—in connection with the proposed or suggested criminal proceedings?

Mr. FINNEY. At that time I knew nothing about that. I know what has been testified to heretofore with reference to the visits of these people to the district attorney and the papers they carried with them. Now, as to whether that should be defined as steps or not is a question of opinion.

Mr. BRANDEIS. You know, do you not, that the daily reports of Glavis were in the General Land Office in the month of September, 1908?

Mr. FINNEY. No, sir; I do not know that they were.

Mr. BRANDEIS. Do you wish this committee to believe that you have any doubt as to the daily reports of Glavis for the year 1908 being in the General Land Office in September, 1908?

Mr. FINNEY. I naturally would presume that they were there. The special agents are required to send their reports to the Land Office, but when you ask whether I know if they were there I will have to answer that I do not.

Mr. BRANDEIS. You have no doubt that they were there, have you?

Mr. FINNEY. I presume that they were there.

Mr. BRANDEIS. You presume that the documents that were produced here, these General Land Office reports, in response to your request, that they were in the General Land Office in September just as well as they were in February, when they were produced here?

Mr. FINNEY. I do not know. Some of them might have been in the office of the field division; I do not recall that.

Mr. BRANDEIS. The daily reports of Glavis which I am talking about would have been in the General Land Office?

Mr. FINNEY. Presumably so; yes, sir.

Mr. BRANDEIS. Now, I want to introduce that as evidence—that that was there and was not produced to the President as bearing on this point. I offer this.

Mr. OLMSTED. Is it not already in, Mr. Brandeis?

The VICE-CHAIRMAN. The witness answered the question.

Mr. OLMSTED. I mean was it not in evidence?

Mr. JAMES. Why were they not presented to the President?

Mr. FINNEY. I do not know, Mr. James.

Mr. BRANDEIS. I call attention more particularly to these daily reports.

Mr. FINNEY. They were not material, I presume, or were not regarded as material.

Mr. BRANDEIS. And I call attention to the items of April 11 and April 21 and April 22, page 861 of the testimony. It is equally true according to your presumption and knowledge, so far as you have it, that the daily reports of Jones were there, were they not?

Mr. FINNEY. Presumably they were; yes, sir.

Mr. BRANDEIS. I call attention in that connection to the entries of Jones on April 21, on page 906; April 22, on pages 906 and 907; April 27, page 907; May 14, page 908; May 15, page 908; May 16, page 908; May 17, page 908.

The VICE-CHAIRMAN. Those are Jones's reports?

Mr. BRANDEIS. These are Jones's daily reports. Now, there was also, so far as you know, in the Seattle land office, in September, 1909, at the time of the preparation of the answers to the President, this letter of Todd to Glavis, of May 18, which appears in evidence on page 836, in which Mr. Todd advises that he does not, under the circumstances, think that he ought to take any action, but that the matter ought to be referred to the General Land Office and by it possibly to the Attorney-General.

Mr. FINNEY. I can only answer that I did not know it was there. I presume that it was.

Mr. BRANDEIS. This office obtained it from there when it obtained the papers in pursuance of my call.

Mr. FINNEY. Possibly; yes, sir.

Mr. BRANDEIS. There are now in the General Land Office, are there not, and were in the Seattle office, so far as you know, in September, 1909, the letters or copies of letters of April 22, of Jones to Todd, of April 24 of Glavis to Jones, of May 13 of Todd to Jones, of May 14 of Jones to Todd, which are referred to in the letter of Mr. Christensen to Mr. Schwartz of February 8, 1910?

Mr. FINNEY. I do not know that they were there. I presume that they were, however.

Mr. BRANDEIS. They are now in the General Land Office, are they not?

Mr. FINNEY. They have been forwarded to the General Land Office.

Mr. BRANDEIS. And forwarded from Seattle by Mr. Christensen, as stated?

Mr. FINNEY. Yes, sir.

Mr. BRANDEIS. Well, now, the other paragraph in the opinion of the Attorney-General which is italicized, in which italics—I mean exclusive of the Attorney-General—in which italics appear on page 804, to which I call your attention—

Mr. FINNEY. Yes, sir.

Mr. BRANDEIS. Begins on page 803, and is this:

Fourth. Glavis's claim that he prevented the Government from being defrauded by procuring a reference to the Attorney-General of the questions of law involved, and the overruling by him of an opinion written by Assistant Secretary Pierce, which would have enabled the Cunningham claimants to procure patents on their claims, is absolutely disproved by the record, which shows: (1) That the letter submitting the questions to the Attorney-General, the form of which was prepared by Mr. Schwartz in conference with Glavis and was in part suggested by him, by its very terms *excluded any possible reference to the Cunningham claims*; and (2) that with the explanation of the somewhat ambiguous phrase "initiation of the entry" used by Assistant Secretary Pierce, his construction of the statute did not differ from that given to it by the Attorney-General in his opinion.

Mr. BRANDEIS. Now is it not a fact, Mr. Finney, that the Attorney-General when he wrote the opinion had in his possession as a part of the papers from which he was considering the question suggested, the Glavis reports in the Cunningham case of March 23 and the Glavis report in the Cunningham case known as the report of May 26, 1909—both reports 1909?

Mr. FINNEY. I do not know whether he had or not. I presume they are parts of this document and presumably he was familiar with it.

Mr. BRANDEIS. No; I am not asking whether he had those two papers in his possession at the time he wrote the summary and report for the Attorney-General, dated September 11, but whether it is not a fact that he had those two reports of Glavis in the Cunningham cases when he wrote that opinion of June 12, which is there under discussion and which he refers to saying "it is obvious that the matter did not refer to the Cunningham case."

Mr. FINNEY. I do not know whether he had. I had not sent it up with the request for the opinion which was prepared by me and signed by Assistant Secretary Pierce.

Mr. BRANDEIS. Do you not know that he did have them?

Mr. FINNEY. No; I do not know that he had them.

Mr. BRANDEIS. I want to call your attention to the letter appearing on page 1933 of the testimony, the letter of Attorney-General Wickersham [reading]:

DEPARTMENT OF JUSTICE,
OFFICE OF THE ATTORNEY-GENERAL,
Washington, D. C., March 16, 1910.

Hon. KNUTE NELSON,
Chairman Joint Committee,
United States Senate.

MY DEAR SENATOR NELSON: I am in receipt of your favor of March 15, handing me a letter received by you from Mr. Louis D. Brandeis, under same date, asking that I be requested to produce to the committee the following papers:

All letters, telegrams, and other papers received by him prior to September 19, 1906 from L. R. Glavis, from Henry M. Hoyt (the attorney-general of Porto Rico), from Secretary Ballinger, or from any other person relating to the construction of the act of May 28, 1908 (the Alaska coal-land act, or to the Cunningham claims, or to the so-called Glavis charges), and copies of all letters, telegrams, and other papers sent by him to any person prior to said date in relation to any of said matters."

In reply I beg to transmit herewith the only papers which seem to be on the files of this department falling within the above description, viz:

Letter addressed to me by Secretary Ballinger, dated May 26, 1909.

Letter addressed to me by Assistant Secretary Pierce, dated May 26, 1909.

Carbon copy of letter dated Portland, Oreg., March 23, 1909, addressed to the Commissioner of the General Land Office by L. R. Glavis, chief of field division.

Carbon copy of statement by H. H. Schwartz, chief of field division, as to the Alaska coal-land act of May 28, 1908.

Carbon copy of letter addressed to the Commissioner of the General Land Office by — (apparently L. R. Glavis), chief of field division, dated May —, 1909.

Letter addressed to me by Frank Pierce, Acting Secretary of the Interior, dated August 27, 1909, and carbon copy of reply to the same by the Acting Attorney-General, dated August 28, 1909.

Very respectfully, yours,

GEO. W. WICKERSHAM,
Attorney-General.

Now, is it not a fact that these two documents of March 23, 1909, and of May 28, 1909, referred to in the Attorney-General's letter are respectively the reports of Glavis on the Cunningham claims of March 23 and of May 28, 1909?

Mr. FINNEY. They may be; I do not know.

Mr. BRANDEIS. Well, now, I will call your attention to the documents and ask you to say whether they are or not.

The VICE-CHAIRMAN. At this point the Chair will recognize Mr. Graham if he makes a motion to take a recess until 2 o'clock.

Mr. GRAHAM. Mr. Graham is not asking for recognition nor does he, in fact, want it.

Mr. DENBY. Well, I will make the motion myself.

The VICE-CHAIRMAN. The committee will then take a recess until 2 p. m.

(The committee thereupon, at 12.45, took a recess until 2 o'clock p. m.)

AFTER RECESS.

The committee reassembled at 2 p. m.

The VICE-CHAIRMAN (Mr. McCall). Mr. Brandeis, you may proceed.

Mr. BRANDEIS. I ask you, Mr. Finney, whether it was not a fact that the letter or report of the chief of field division of March 23, 1909, to the commissioner, and also the further copy of letter addressed to the commissioner, dated May —, 1909, from the chief of field division, referred to in Attorney-General Wickersham's letter to Senator Nelson of March 16, 1910, on page 1933, or of what has been commonly called in this hearing the Glavis-Cunningham report of March 23, and this Cunningham report of May 26, 1909, and more particularly whether they are not the reports which appear on 2068 and 2073 of the record?

Mr. FINNEY. The document at the top of page 2073, being the letter originally submitted by Messrs. Glavis and Schwartz for taking the opinion of the Attorney-General, or a copy of that, was before the Attorney-General, because I know it was transmitted with the letter of May 26, which I prepared in the department and forwarded to the Attorney-General to take his opinion. I do not know whether the report of March 23, 1909, on page 2068, and the unsigned paper on 2073 signed "Chief Field Division" were before him when he wrote this opinion or not.

The VICE-CHAIRMAN. What is it you are now asking him to identify?

Mr. BRANDEIS. It is a letter I am asking him to identify.

Mr. FINNEY. They seem to be papers transmitted to this—transmitted copy.

Mr. BRANDEIS. Perhaps I misled you in referring to page 2073. I misled you in making the statement that the paper there referred to is the one that you sent to the Secretary. If you will look at that page again I think you will see that the page 2073 is but a part of the letter, which begins on 2072 and ends on 2074.

Mr. FINNEY. But there is a copy of the paper which was forwarded to the Attorney-General included in the statement.

Mr. BRANDEIS. But the Cunningham report of May —, 1908, is commonly known as the May 26 report.

Mr. FINNEY. I understand that to be one of the papers forwarded by the Attorney-General. Whether he considered it or not I do not know.

Mr. BRANDEIS. You mean forwarded to the Attorney-General?

Mr. FINNEY. No; forwarded to the committee by the Attorney-General.

Mr. BRANDEIS. The committee?

Mr. FINNEY. Yes.

Mr. BRANDEIS. And it is also true that the Attorney-General forwarded to the committee the other letter, which is the March 23 report?

Mr. FINNEY. Yes, sir.

Mr. BRANDEIS. And therefore that he had them?

Mr. FINNEY. He evidently had them in his department.

Mr. BRANDEIS. Well, now, it is also a fact, is it not, that both the March 23 report and the May 26 report are perfectly clear, and the proposition was that you were dealing there with a case of fraudulent combination before the original location?

Mr. FINNEY. Mr. Glavis's letter—if it was his—signed "Chief of field division"—

Mr. BRANDEIS. You haven't any doubt that he did sign it?

Mr. FINNEY. I presume, yes, sir, that it was his report. I think, or at least a copy of it—at least that certain entries of the Cunningham group, rather his memorandum of May, 1909—states somewhere that the Cunningham group may be taken as characteristic, and he says:

A state of facts covering the Cunningham case having been contained in the letter hereinabove quoted submitted to the department, its opinion renders futile any further investigation of that and similar groups hereinbefore mentioned.

We do not admit the correctness of that statement.

Mr. BRANDEIS. But you do admit that. Perhaps you answered——

Mr. FINNEY. Voluntarily.

Mr. BRANDEIS. I asked whether each of these two reports—the March 23 and the May 26 report—did not show clearly and unmistakably that they were dealing with a case of fraudulent combination prior to the location?

Mr. FINNEY. No; I do not think so.

Mr. BRANDEIS. Well, now, let me call your attention to certain passages. Take, on the list on page 200, in the letter of May 26——

Mr. FINNEY. What page of the Senate document?

Mr. BRANDEIS. Senate Document 40 [reading]:

The Cunningham is a characteristic group, and reference is here made to my report of March 23, 1909, thereon, submitting evidence which shows that the coal declaratory statements in said group were filed subject to an agreement that upon title being perfected to the individual claims of 160 acres each the entryman was to deed such claim to a company to be formed for the purpose of developing and marketing the coal and receive stock in said company in payment, Cunningham, the agent in this case, to receive one-eighth of the stock issued to each entryman.

Mr. FINNEY. That is Mr. Glavis's conclusion as expressed in this report.

Mr. BRANDEIS. I say it is as stated by him a case of clearly fraudulent combination.

Mr. FINNEY. That is his statement.

Mr. BRANDEIS. Prior to the making of a location, and not subsequent to location.

Mr. FINNEY. He states that it is.

Mr. BRANDEIS. That is the case that he presents—whether he is correct or not—it is the case that he presents, isn't it?

Mr. FINNEY. Yes; he makes that statement in this letter.

Mr. BRANDEIS. And he also makes in the letter appearing on the list 202 this statement, does he not [reads]:?

As before stated, the Cunningham group may be taken as characteristic, and my report thereon sets forth fully the facts in connection therewith. A state of facts covering the Cunningham case having been contained in the letter hereinabove quoted submitted to the department—

That is the letter to the Attorney-General, is it not?

Mr. FINNEY. The proposed letter to the Attorney-General.

Mr. BRANDEIS (continuing):

its opinion renders futile any further investigation of that and the similar groups hereinbefore mentioned. I will therefore make no further investigation of these filings unless instructed by you.

Mr. FINNEY. That is Mr. Glavis's statement, and I do not think it is correct.

Mr. BRANDEIS. I say that statement which he made before or on May 26 shows clearly, does it not, that he believed that Secretary Pierce had decided that under the act of May 28, 1908, the Cunningham claims could go to patent?

Mr. FINNEY. That seems to be the conclusion which Glavis expressed in this paper.

Mr. BRANDEIS. But isn't it an inevitable conclusion as to what he then believed?

Mr. FINNEY. I think Glavis believed it; yes. He says so in this paper.

Mr. BRANDEIS. Am I correct in understanding you to have testified that in your opinion there—and I assume also in Secretary Pierce's opinion, as recording your opinion—that in your opinion the Cunningham claimants, if the facts were true, all of the evidence was sufficient, as Glavis believed it to be, of a fraudulent combination prior to location, that in that event the Cunningham claimants would not have been entitled to a patent under the law of May 28, 1908, any more than they would under the law of 1904?

Mr. FINNEY. That is correct.

Mr. BRANDEIS. That is your opinion?

Mr. FINNEY. That is my opinion; yes.

Mr. BRANDEIS. And you desire the committee to understand that is not only your opinion now, but it was your opinion in May, 1908?

Mr. FINNEY. After I examined the Cunningham journal, or a copy of it.

Mr. BRANDEIS. After you examined the Cunningham journal? And that is prior to the time when you drafted the opinion, together with Mr. Clements, which Mr. Pierce signed.

Mr. FINNEY. Yes.

Mr. BRANDEIS. Well, now, I call your attention to Miles C. Moore's letter to Mr. Ballinger of May 22, which appears in the list at pages 197 and 198—

The VICE-CHAIRMAN. Is that in our record?

Mr. BRANDEIS. It is in the list and also in our record at one or two places.

Mr. VERTREES. On page 748 of the record; also 238.

Mr. BRANDEIS. I call your attention specifically to this statement of Miles C. Moore:

Patents are still offered under the new law, but as no money can be raised on them another year is lost and development delayed.

Now, that statement of ex-Governor Moore is true, or is it false?

Mr. FINNEY. It is not true, so far as I know; so far as any statements which were made by Secretary Pierce in my presence to Mr. Moore or as to any statement that I made to Mr. Moore.

Mr. BRANDEIS. Well, you were present when ex-Governor Moore was there, weren't you?

Mr. FINNEY. I took ex-Governor Moore into Mr. Pierce's room on the 20th or 21st of May, after I had called Governor Moore's attention to the opinion of May 19, and I suggested—called his attention to it as construing the act of 1908.

Mr. BRANDEIS. Yes.

Mr. FINNEY. And Governor Moore wanted some explanation as to what would be necessary to do to try to come in under the act. I took him into Mr. Pierce's room, because I wanted Mr. Pierce to make the statement or to hear it made, so that it would be official, so that the head of the department would have an opportunity to give the correct opinion.

Mr. BRANDEIS. Did you leave Mr. Pierce's presence before or after ex-Governor Moore?

Mr. FINNEY. Well, I do not know that I can swear positively. My recollection is that I did not leave until after ex-Governor Moore had gone, but that is only my recollection.

Mr. BRANDEIS. Then you now state that this statement which ex-Governor Moore made is not true?

Mr. FINNEY. No, sir; I did not say that. He does not say that Mr. Pierce offered the patents.

Mr. BRANDEIS. Well, who did offer it?

Mr. FINNEY. I do not know.

Mr. BRANDEIS. Well, now, let me see whether he did or not:

Assistant Secretary Pierce read to me yesterday a letter recently addressed to the Commissioner of the General Land Office, instructing him, in effect, to construe the law liberally and not to allow technicalities to obstruct or delay where important interests were involved and where no moral turpitude or fraudulent intent was shown. It now seems to me, in reviewing the situation, that technicalities have been allowed to govern. The entries in Cunningham's memorandum book, made prior to the extension of the coal-land laws to Alaska, seem to be the bugaboo, although some stress is put upon the fact that there was an understanding to unite these claims after patent. As you know, no agreement was entered into, and if it had been simply a matter of mental reservation, while the result would have been the same, we would not have been accused of violating the law. Both Mr. Pierce and Mr. Dennett admit there was neither fraudulent intent nor moral turpitude shown. Patents are still offered under the new law; but as no money can be raised on them, another year is lost and development delayed.

Wherein is that statement of Governor Moore's not directly inconsistent with what you are testifying to?

Mr. FINNEY. I did not tell him he could have his patents under the act. I suggested to him the method of procedure which he might follow, and which his associates might follow if they desired to attempt to come in under the act of 1908; that was to file an amended application for patent, and plat of survey, and the proof required by the regulations under that act. As to what we would do when they filed their applications I would not say; I could not say.

Mr. BRANDEIS. Is it not a fact, according to the view which you have stated to this committee, that it is entirely immaterial whether he has proceeded under the old law or the new law so far as the legality or the right to a patent is concerned in lieu of the fact that the only contention in regard to the Cunningham claims was the claim of fraudulent combination prior to the location, there being no suggestion of any combination after location?

Mr. FINNEY. From my view point, if it is proven that there was an illegal combination before location among these entrymen, they can not have patents either under the act of 1904 or the act of 1908.

Mr. BRANDEIS. Now, is it not a fact that the only contention that was made was a contention of a fraudulent agreement prior to location, and that all of the claims and all of the suggestions of Glavis and all of the evidence which he introduced pointed to a combination then, if ever?

Mr. FINNEY. I did not so understand.

Mr. BRANDEIS. What evidence is there of any combination later?

Mr. FINNEY. His letter submitted for transmission to the Attorney General.

Mr. BRANDEIS. I say in regard to the Cunningham claims. You say there was nothing in that letter as to the Cunningham claims or in regard to the Cunningham claims. Where do you find anywhere a contention of Glavis or any contention except one prior to location?

Mr. FINNEY. Why, he mentions the Salt Lake conference between certain claimants and the representatives of the Guggenheims.

Mr. BRANDEIS. Where?

Mr. FINNEY. Either he or Jones referred to that in their reports.

Mr. BRANDEIS. Where does he refer to it? Let us see it.

(Mr. Finney examines record.)

Mr. DENBY. What was the last question, Mr. Brandeis?

Mr. BRANDEIS. I asked him where that statement was.

Mr. DENBY. Have you a limit in the testimony to look through? It would take some time to look through those 3,000 pages.

Mr. BRANDEIS. Oh, no; he has referred to the report, not to the testimony. We are all going back now to the Senate document.

Mr. FINNEY. My recollection was that it accompanied one of Mr. Jones's reports in August.

Mr. BRANDEIS. Oh, yes; but there is no suggestion in there of anything subsequent. We did not know as much as we do now with regard to that.

I call your attention, as bearing upon this point, to the passage in the report of March 23, which appears in the list on pages 182 to 183.

Mr. FINNEY. What page of the Senate document?

Mr. BRANDEIS. It is in the Senate document at page 505 [reading]

I have not been advised whether this group intend to consolidate their claims in accordance with the act of Congress approved May 28, 1908, but since said act is only for the benefit of bona fide coal entries, any entry fraudulently obtained and subject to cancellation can not be considered as bona fide entry and therefore could not be

allowed the benefit of said act. I state these filings were fraudulently obtained because if the facts admitted by the agent of the claimants and the claimants in their affidavits hereto attached had been set out in the declaratory statements filed in the land office, the same could not have been accepted and allowed without violating the statute.

Now it is clear, is it not, that they could not have stated anything in the declaratory statement except something that happened prior to the declaratory statement and to the location?

Mr. FINNEY. Why, they certainly could not have stated it, he says, if the "backs had been stated"——

Mr. BRANDEIS. Yes; but I ask you whether the only facts that Glavis was presenting to the commissioner and the facts which he had presented to you and to Secretary Pierce when you talked over this matter were only facts in regard to an agreement prior to the location?

Mr. FINNEY. Yes; the grub-stake agreement in that journal relative to transactions long prior to the locations of the claims.

Mr. BRANDEIS. And those were the only papers that were submitted. Now, I go back to the proposition that being so, that those were the only questions existing at that time in regard to the Cunningham claims, why would it have made a particle of difference and what benefit could these gentlemen, ex-Governor Moore or anybody else, get by going under the act or trying to go under the act of May 28, when the same rigid rule would have been applied under the act of May 28 as would have been applied under the act of 1904, or that state of facts?

Mr. FINNEY. Mr. Brandeis, when we are considering a land claim we do not take the report of any special agent as a fact; we treat it as an allegation which is to be proven at a hearing where the parties shall have an opportunity to be heard. I did not know whether Mr. Glavis would be able to substantiate those charges.

Mr. BRANDEIS. Of course, you do not know that; never could know that until one comes to the final decision of a final tribunal. But you were discussing with ex-Governor Moore the chances which he had, and he wanted a patent under the law of 1904?

Mr. FINNEY. Yes.

Mr. BRANDEIS. He says it was denied him, but he says in his letter "patents are still offered under the new law"——

Mr. FINNEY. We did not offer him the patents.

Mr. BRANDEIS. Then he stated what was not true?

Mr. FINNEY. As far as I am concerned, if he says I offered it to him—I do not know that he says that, or that Mr. Pierce said that.

Mr. BRANDEIS. He does not quote you with it.

Mr. FINNEY. Or Mr. Pierce?

Mr. BRANDEIS. He speaks of Mr. Pierce and Mr. Dennett.

Mr. FINNEY. Mr. Pierce did not offer the patents on those claims in my presence.

Mr. VERTREES. But Governor Moore don't say that he did. If you will look at the testimony delivered yesterday by Mr. Pierce, he sets out all of Governor Moore's testimony on that point in which he says specifically that Mr. Dennett is the man who wrote that.

Mr. BRANDEIS. I am not asking about Mr. Pierce's testimony. I know what his testimony was.

Mr. VERTREES. That is a fact proven no later than yesterday, which we all know. If you look at page 2901 in which Mr. Pierce

sets out the testimony of Governor Moore, and in which Governor Moore shows who he means there, and he does not say that—

Mr. BRANDEIS. Now, I would like to ask Mr. Vertrees, in order to get the record clear on this point, one question. Did you understand me to be asking Mr. Finney about ex-Governor Moore's recent testimony in the Cunningham cases?

Mr. VERTREES. That is just what I am objecting to.

Mr. BRANDEIS. But in regard to his letter?

Mr. VERTREES. The former—and that is just what I am objecting to exactly, that you are endeavoring to have this witness state that Governor Moore had made a misstatement when here, no later than yesterday it was shown just what Governor Moore had said.

Mr. BRANDEIS. Now, I object, Mr. Chairman, to these interruptions. They seem to be eminently improper.

The VICE-CHAIRMAN. What was your question, Mr. Brandeis?

Mr. VERTREES. Let us have the facts as they were proven. No later than yesterday—

Mr. BRANDEIS. Mr. Vertrees may say whatever he likes, but I would like to protest against these interruptions.

Mr. VERTREES. I do not want counsel to stand here and pretend that Governor Moore has made a misstatement and have this witness by indirection say so. Governor Moore has not, and the record yesterday shows that he did not.

Mr. BRANDEIS. I entirely agree with you that Governor Moore has not made a misstatement, and in that letter of May 22 I think he stated the absolute truth then.

Mr. VERTREES. And there is no conflict between his letter and his deposition; not the slightest.

Mr. MADISON. There is a happy solution of the matter. Both gentlemen agree. Let's go right on now.

The VICE-CHAIRMAN. What was the last question?

Mr. FINNEY. I answered the last question. I said Mr. Pierce did not promise Governor Moore's patent under the act of 1908, and I did not promise him a patent.

Mr. BRANDEIS. Well, now, I think you stated yesterday that these two letters which bore the signature of Mr. Ballinger to ex-Governor Moore of May 24 and May 27 were prepared by you?

Mr. FINNEY. I drafted those letters.

Mr. BRANDEIS. Well, by drafting the letters you wrote the letters, did you not—wrote them out—and everything was yours except the signature of Mr. Ballinger?

Mr. FINNEY. Yes, sir.

Mr. BRANDEIS. Well, now, I call your attention to this letter on page 198 of the list of orders:

DEAR SIR: I am in receipt of your letter of May 22, 1909, expressing your disappointment at opinion of First Assistant Secretary Pierce with reference to what are known as the Cunningham coal entries in Alaska, and stating that it seems to you that a technicality has been allowed to govern rather than a liberal construction of the law.

In reply I have to advise you that I can not undertake to issue any order or make any ruling in the matter as requested because of the embarrassment which would result from the fact that I was, while not holding an official position, called upon to advise in the matter. The case has, however, been carefully looked into, and I wish to say that, in view of all the facts now disclosed, I would, if I were ruling upon the matter, hold that the principle announced in the opinion of Judge Hanford in the case of *United States v. Portland Coal and Coke Company et al.*, October 5, 1908, is directly applicable to these cases, and that if the allegations made be proven patents can not issue under the provisions of the act of April 28, 1904.

As you have been advised, the department is disposed to give the coal-land act of May 28, 1908, as liberal a construction as is consistent; and if you and your associates desire to take advantage of that act you should proceed in accordance with same and with circular of instructions of July 11, 1908. In this connection attention is directed to the paragraph of instructions entitled "Pending entries."

Very respectfully,

R. A. BALLINGER, *Secretary*.

Now, when you refresh your recollection by that letter written by you, do you not note that you said there, although you state it was contrary to your practice, that you did there assume the facts to be those that have been contended for and stated by Mr. Glavis?

Mr. FINNEY. No, sir; I do not see that.

Mr. BRANDEIS. Do you say there, if you were called upon to rule, "If I were ruling upon the matter I should hold the case directly applicable, and the patents could not issue?"

Mr. FINNEY. Under the act of 1904—

Mr. BRANDEIS. I say that is under the act of 1904.

Mr. FINNEY. Yes, sir.

Mr. BRANDEIS. And those same facts which would have barred issue under the act of 1904, why would they not equally have barred the issue under 1908, if you had then held to the view which you have stated to the committee to have been your view at that time?

Mr. FINNEY. They would, if proven; they had not been proven at that time.

Mr. BRANDEIS. Were not they just as much proven in respect to the act of 1904 as they were in respect to the act of 1908?

Mr. FINNEY. We did not have any applications under the act of 1908 at the time that had any connection with the Cunningham group. They had a perfect right to try to take advantage of that act, and if they had presented an application under the act it would have been considered in connection with all the—

Mr. BRANDEIS. Yes; but why are you suggesting to ex-Governor Moore to make application under an act which, in all of its terms—in other terms—was less favorable; that is, it limited him and bound him in such a way that he would not even take what was deemed to be a better chance under it to get a patent; why should you have pointed that out to him, if he did not have any better chance to get the patent under the act of 1908, than he did under the act of 1904?

Mr. FINNEY. That is very simple. There may have been an understanding or agreement entered into after location for all I know, and the Government may have been unable to prove its allegation as to an agreement made prior to location. In that event he could have come in under the act of 1908. That was something for them to decide; not for the Land Department to decide.

Mr. BRANDEIS. But isn't it a matter of fact, Mr. Finney, that the only facts which were before you—I mean evidence submitted—the only contention of Mr. Glavis was the contention of a combination prior to location?

Mr. FINNEY. The allegations made in the Cunningham journal, or the data in the Cunningham journal, indicated an agreement in 1903.

Mr. BRANDEIS. Prior to location?

Mr. FINNEY. Yes; prior to location.

Mr. BRANDEIS. And what is more than that, not only the language in the journal, but in all of the affidavits which were submitted?

Mr. FINNEY. Oh, I do not know that I could agree with that.

Mr. BRANDEIS. Well, point out a single one where there is any other suggestion.

Mr. FINNEY. I mentioned one—the negotiations with regard to the sale of the claims.

Mr. BRANDEIS. That was a matter that Mr. Glavis did not present in his report, isn't it?

Mr. FINNEY. It was mentioned in his report of March 23.

Mr. BRANDEIS. It was a matter that had no relation to it, and that he stated that the Cunningham agreement he threw out, didn't he, in these affidavits?

Mr. FINNEY. Threw out?

Mr. BRANDEIS. Wasn't it a fact that the affidavits presented were directly to the effect that there was no agreement and never had been with the Guggenheims, and isn't it a fact that the circumstance of there having been an agreement with the Guggenheims in July, 1907, did not come out to the public and was not known at all only after this period—did not come out to the public until during this investigation?

Mr. FINNEY. No; that is not my understanding, Mr. Brandeis. My understanding is that Mr. Cunningham made two affidavits, and in the latter one he explained, according to my recollection, that an agreement, or that an arrangement, or that he had no arrangement with the Guggenheims existing at that time.

Mr. BRANDEIS. By the second agreement are you referring to the agreement of September 4, which was drawn up by Judge Ballinger while he was out of office?

Mr. COTTON. You mean affidavit, Mr. Brandeis.

Mr. BRANDEIS. Affidavit, yes; affidavit September 4, which was drawn up by Judge Ballinger and submitted by him to Secretary Garfield?

Mr. FINNEY. Yes, sir.

Mr. BRANDEIS. Now, I wish you would turn to that affidavit of September 4, 1908—

Senator FLETCHER. That appears on page 131 of the list.

Mr. BRANDEIS. One hundred and thirty-one of the list Senator Fletcher calls attention to.

Mr. FINNEY. And on page 500 of Senate document, the paragraph I have in mind.

Mr. BRANDEIS. Yes; well, will you read it?

Mr. FINNEY (reading):

In addition to the statements set forth in that certain affidavit made by affiant, dated the 6th day of March, 1908, before L. R. Glavis, chief field division, G. L. O., affiant further states he knows of no individual entryman in said group of entries that has any contractual obligation of any nature whatsoever with the Guggenheim syndicate, or any other syndicate or corporation whatsoever, or any of their agents, whereby his claim or entry or any part thereof is disposed of or to be disposed of, encumbered or otherwise pledged in any sense whatsoever.

Mr. BRANDEIS. Well, now, that doesn't indicate that he had any. It is a direct statement that he had not, isn't it?

Mr. FINNEY. Yes, sir; but it refers back to previous affidavits.

Mr. BRANDEIS. Now, will you turn to the previous affidavit—I suppose you refer to the affidavit of March 6, which you will find in the list on page 88.

Mr. FINNEY. What page of the document?

Mr. BRANDEIS. Page 472 of Senate document.

Mr. FINNEY. That is the affidavit before Special Agent Jones?

Mr. BRANDEIS. Yes. Now, will you read the passage in that affidavit which, to your mind, states that there was an agreement with the Guggenheims?

Mr. FINNEY (reading):

The said syndicate has, since we have secured final certificates, endeavored to come to an agreement or understanding with reference to our coal. In company with two others of our claimants, I met their representative—

And so forth.

Mr. BRANDEIS. Go on; that is an express denial, isn't it?

Mr. FINNEY (continuing reading):

I met their representative in Salt Lake, Utah, and agreed that in the event of their railroad construction we would sell them all the coal required for their steamship and railroad use and whatever additional amount of coal they could find market for. We made clear to the representative of the said Guggenheims that we were but a committee, with no authority to bind the coal-claim owners, but that we thought, after title was secured, that the owners would be willing to act with us on such a basis. As the said Guggenheim syndicate has since changed their plans regarding the construction of their railroad terminals—

Mr. BRANDEIS. If you will go on a little further, "the said"—

Mr. FINNEY (continuing):

the said agreement has been abrogated and we have now surveyed for our own railroad from Kanak Island to our coal fields and we intend to proceed with developing and mining the coal for ourselves. Not only have the Guggenheim interests had nothing to say regarding our coal lands, but no other corporation has had anything to do with it.

Mr. BRANDEIS. Go on and read the next, will you?

Mr. FINNEY (continuing reading):

We have had no written agreement whatever with any corporation, and the only understanding which we have had is that among ourselves.

Mr. BRANDEIS. Well, now, isn't that a direct statement? He then goes on to state what his understanding is. Isn't that a direct statement that they had had no agreement or understanding except that among themselves?

Mr. FINNEY. This last sentence is, but the first part relates to a meeting with the representatives of the Guggenheims in an effort to come to some understanding.

Mr. BRANDEIS. Yes; and the denial that they did.

Mr. FINNEY. Yes.

Mr. BRANDEIS. A denial that they did. And, as a matter of fact—it is a matter of fact, isn't it, that there was no evidence whatsoever of any other claim, any claim prior to the Cunningham—I mean any agreement or combination in violation of law except the one prior to the location?

Mr. FINNEY. Oh, I do not know that there was any direct evidence of any kind of combination after location.

Mr. BRANDEIS. There was no claim of evidence in this matter submitted to you, was there?

Mr. FINNEY. Only such as might be inferred or as a matter of suspicion from these matters and dealing with the Guggenheims.

Mr. BRANDEIS. Just about this same date, when Mr. Glavis was there with his trunk full of papers that you refer to—just about that same time, or shortly afterwards, there began to be a drawing of charges for this Cunningham claim on which they were to proceed?

Mr. FINNEY. Oh, that was some time afterwards.

Mr. BRANDEIS. Well, how long afterwards?

Mr. FINNEY. You mean the formulation of the charges in the Land Office for hearing?

Mr. BRANDEIS. I mean when they began to do it, not when it was finally submitted.

Mr. FINNEY. As I recall it, Glavis returned West in May, the understanding being that he would formulate definite charges against the claim some time in June, 1909. I went to the Land Office at the suggestion of Mr. Pierce to find out whether specific charges had been formulated and filed and was informed that Mr. Glavis had not submitted a definite charge. Mr. Pierce then wired him to submit his charges, and later on I believe he submitted a further report or document.

Mr. BRANDEIS. By the way, it was in June and not May that Mr. Glavis returned West, was it not?

Mr. FINNEY. I do not know the exact date.

Mr. BRANDEIS. And these charges were formulated and this Cunningham case has been tried at great length?

Mr. FINNEY. Yes, sir; but I haven't read the evidence.

Mr. BRANDEIS. You do not know anything about that?

Mr. FINNEY. No, sir.

Mr. BRANDEIS. Well, now, you understood, did you—or at least was I correct in understanding you to have stated—that the matter referred to the Attorney-General did not, in your opinion, in any way affect the Cunningham cases?

Mr. FINNEY. Certainly.

Mr. BRANDEIS. You thought that it did?

Mr. FINNEY. That it did not.

Mr. BRANDEIS. It did not. Well, now, I call your attention to this other letter that you drafted to ex-Governor Moore for Mr. Ballinger's signature, the letter of May 27, which appears in the list on page 204 and in Senate document at page 179, and call your attention specifically to this paragraph.

I believe your criticisms are unwarranted, but have myself taken this matter up with the President and the Attorney-General, so that the action of this department will probably be reviewed by the latter, in which event you will be promptly advised

Very truly, yours,

R. A. BALLINGER, *Secretary*.

Mr. MILES C. MOORE,
Walla Walla, Wash.

Mr. BRANDEIS. Now, Mr. Finney, if ex-Governor Miles C. Moore and the other Cunningham claimants were not in any way interested in the question submitted to the Attorney-General, why did you put that in the letter?

Mr. FINNEY. I do not think I wrote that letter.

Mr. BRANDEIS. I thought you testified that you did.

Mr. FINNEY. I did state a moment ago that I wrote two letters to Governor Moore.

Mr. BRANDEIS. Did you not testify yesterday directly to the point that you did prepare that letter?

Mr. FINNEY. I do not know that I mentioned this letter by date. I wrote two letters for the Secretary to sign, addressed to Governor Moore.

Mr. BRANDEIS. Well, what other letters are there than those two—I mean anywhere about that time?

Mr. FINNEY. Here is another one.

Mr. VERTREES. About that time?

Mr. FINNEY. Yes, sir.

Mr. BRANDEIS. But the two that I have been asking him about were Secretary Ballinger's letters to ex-Governor Moore dated May 24 and 27.

Mr. FINNEY. I stated a few moments ago that I prepared the letters of May 24 and May 27, but I was mistaken about the last letter.

Mr. BRANDEIS. I asked you also if you had not stated the same thing yesterday, in your direct examination?

Mr. FINNEY. I do not think that I stated I wrote the letter of the 27th; possibly I did. I prepared two letters addressed to Governor Moore, which Mr. Ballinger signed.

Mr. BRANDEIS. You mean two about that time?

Mr. FINNEY. Yes, sir; in May.

Mr. BRANDEIS. Now, what other letters are there except those two of May 24 and May 27?

Mr. FINNEY. I do not find any others here in this document.

Mr. BRANDEIS. Did you ever hear of any others?

Mr. FINNEY. It was my recollection that I had written two letters to Governor Moore. I do not recall writing this letter of May 27.

Mr. BRANDEIS. Do you think if we had the copy of that letter that it would indicate whether you had initialed it or not?

Mr. FINNEY. The press copies would.

Mr. BRANDEIS. Now, will you produce the press copy?

Mr. FINNEY. I will be glad to do so.

Mr. BRANDEIS. Then we can leave that for the moment. I want to call your attention now to another letter to ex-Governor Miles C. Moore, which is the letter of May 22 from the commissioner to Miles C. Moore which appears in Senate document at page 515 and in the list 197, May 22, 1909, which is as follows [reading]:

MAY 22, 1909.

Hon. MILES C. MOORE,
Walla Walla, Washington.

SIR: In reply to your inquiry, you are advised that applications to consolidate individual pending coal entries in Alaska, under the act of Congress approved May 11 1908, may be filed at any time prior to July 11, 1909. Your attention is called to marked paragraph of the circular of July 11, 1908, on page 21 of the inclosed coal circular.

Very respectfully,

Commissioner.

Now, that indicates, does it not, that ex-Governor Moore was making inquiries in order to find out what he would have to do in order to make application to get the benefit of the liberal provisions of the act of May 28, 1908?

Mr. FINNEY. That appears to be the fact, notwithstanding the fact that he had previously stated he personally would not go in under that act. He said that to Secretary Pierce and myself.

Mr. BRANDEIS. Well, he might have said so, but this shows that he was still considering the way out, does it not?

Mr. FINNEY. It appears so, inasmuch as he made inquiry as to how to proceed.

Mr. BRANDEIS. Now, I want to ask you——

Mr. GRAHAM. At that point, Mr. Brandeis, could we have any light on the particular paragraph of the circular referred to which was marked?

Mr. FINNEY. There is a paragraph on page 21 of the coal-land circular headed "Pending entries," which is doubtless the one marked.

Mr. BRANDEIS. Will you read that, Mr. Finney?

Mr. FINNEY. Yes, sir [reading]:

PENDING ENTRIES.

Claims embraced in unpatented entries, if the entrymen shall so elect, may be consolidated into a single entry under this act, upon presentation of a proper application therefor, within twelve months from date hereof. In the event of such consolidation, no further payment, publication of notice, nor any new or additional survey of the claims embraced in the consolidated entry will be required; but the application must be accompanied by a plat of the claims as consolidated, by proof of the qualifications of the applicants, and by evidence of the assignment of the claims to the applicants.

Mr. BRANDEIS. I hand you herewith from the files of the committee the file of papers transmitted by the Attorney-General in connection with his letter of May 16, 1908, the copies of the Glavis report of March 23, 1909, and of May, 1909, about which I have been cross-examining you, and ask you to state whether those copies do not appear to be original carbon copies of the letters? I mean original carbon copies, as distinguished from copies made specifically for the purpose of transmittal to the Attorney-General.

Mr. FINNEY. They appear to be carbon copies.

Mr. BRANDEIS. Of the original letters?

Mr. FINNEY. I should imagine so.

Mr. BRANDEIS. And the fact that they had no signature, if that is a fact——

Mr. FINNEY. There is no signature.

Mr. BRANDEIS. They had no signature—would tend to that conclusion.

Mr. FINNEY. Yes, sir.

Mr. BRANDEIS. Now, do you recall in the summary a report of the Attorney-General of September 11, 1909, addressed to the President, any reference to the fact that he had had submitted to him those two Cunningham reports of Mr. Glavis?

Mr. FINNEY. No; I do not recall any reference to them. I do not know that they were submitted, except from the letter of transmittal addressed by the Attorney-General to the committee. I have no personal knowledge of it.

Mr. BRANDEIS. Well, I will put my question in the other way. He had those copies.

Mr. FINNEY. I do not know that he had, Mr. Brandeis.

Mr. BRANDEIS. He must have had if he sent them. He had them sometime, did he not?

Mr. FINNEY. In response to the call of the committee he has forwarded them here.

Mr. BRANDEIS. What I ask you was merely whether you recall in his summary and report any reference to the fact that he did have those two reports.

Mr. FINNEY. I do not recall that.

Mr. BRANDEIS. You have heard the testimony which was given before this committee by Henry M. Hoyt, the attorney-general of Porto Rico, in relation to the conversation which he had with Glavis about May 24, 1909, and his subsequent visit—I mean Mr. Hoyt's call upon the Attorney-General of the afternoon of that date, and which is set forth in the testimony on pages 772 to 779.

Mr. FINNEY. I think I was present here while he was testifying.

Mr. BRANDEIS. Do you recall in the summary and report of the Attorney-General of September 11, addressed to the President, any reference to the facts set forth by Mr. Hoyt in that testimony, or to any of them?

Mr. FINNEY. I do not recall any reference in the Attorney-General's summary to Mr. Hoyt.

Mr. BRANDEIS. Or to the fact that any one called upon him in Mr. Glavis's behalf, or at Mr. Glavis's instance?

Mr. FINNEY. I do not recall any such statement in the summary.

Mr. BRANDEIS. It is a fact, is it not, Mr. Finney, that when the Attorney-General rendered his decision declaring that the act of May 28, 1908, afforded no relief to cases of the character of the Cunningham cases, that there had been a fraudulent combination, or alleged fraudulent combination, prior to location—it is a fact, is it not, that that came as a surprise to the Land Office?

Mr. FINNEY. I do not know about the Land Office. It was no surprise to the Department of the Interior.

Mr. BRANDEIS. Was it not a surprise to the Commissioner of the General Land Office?

Mr. FINNEY. I can not speak for him, Mr. Brandeis. I did not have any conversation with him that I recall at the time.

Mr. BRANDEIS. Let me see whether this fact was not called to your attention—the fact stated by Mr. Dennett, the then Commissioner of the General Land Office, to Mr. Schwartz, which appears in his letter of July 20, 1909, which is Senate document, page 425, and in the list on pages 249 and 250. Do you not recall having had called to your attention the fact that Mr. Dennett in that letter in which he comments at length about Mr. Glavis's actions, says: "Of course, I do not wonder that he has to make adverse reports after the Attorney-General's opinion of the law."

Mr. FINNEY. I see that language and I saw this letter, I think, for the first time after this Senate document had been printed.

Mr. BRANDEIS. Do you not recall that another passage was called to your attention in regard to Mr. Dennett's attitude, showing that which did set forth his actions in these matters which he stated in his letter to the President on page 118, and which is as follows:

Even in the case of a presumed tacit agreement prior to location, where the parties could show that they were taking the land for their own advancement and benefit, but intended to cooperate, I have certainly felt sympathetic; but this sympathy has never led me, as can be shown by my statements to numerous people, to yield in the slightest in the direction of any pressure which might be brought of patenting their claims prior to the act of May 28, 1908, or after the Attorney-General's opinion above alluded to, without fully establishing all the facts in the case.

In support of this contention I would respectfully submit that had my sympathy with any claimants been in the nature of active sympathy, I should, as was perfectly possible for me to have done, given to the press in a manner difficult to trace a copy of the Attorney-General's opinion which I had in my possession, so that anyone who had agreements prior to location might be warned. But on the contrary, I protected that opinion with good care and used every precaution to see that it did not get to the

press, so that nothing on my part could be said to hamper investigations. In fact, when I was in Seattle and was approached by Mr. Harriman as to the status of the claims I did not then even tell him of the nature of the Attorney-General's decision, although he told me that Cunningham had stated to certain parties that he, Cunningham, had a recent opinion of the Attorney-General which would "knock all claims under the act of May 28, 1908." I told Mr. Harriman at that time that he must get a copy of that, if he desired it, through some other source than through me. This being after Mr. Glavis secured Harriman's deposition, admitting agreements. The fact that the Attorney-General's opinion was not promulgated enabled Mr. Glavis, so I was informed by him, to secure more explicit statements than had been made before, and from Mr. Harriman the statement which Mr. Harriman claims was made to me, and with which information Mr. Glavis charges me in his letter of July 27, and which I answer hereafter.

Were not the facts in that of Mr. Dennett's action or nonaction in that respect called to your attention?

Mr. FINNEY. No, sir; after the Attorney-General's opinion was received at the department I had copies of it made and sent them over to the Land Office for promulgation in the usual way, by mail or by messenger.

Mr. BRANDEIS. You referred yesterday and quoted from a passage in a memorandum which appears, I think—do you remember where it appears in the Senate document?

Mr. FINNEY. The one I prepared?

Mr. BRANDEIS. Yes; that you quoted from yesterday.

Mr. FINNEY. On page 712 of Senate document.

Mr. BRANDEIS. And that memorandum follows immediately after a letter of June 12, 1909?

Mr. FINNEY. June 16.

Mr. BRANDEIS. June 16, 1909, which transmits a copy of the Attorney-General's opinion.

Mr. FINNEY. I am not responsible for the order in which they appeared.

Mr. BRANDEIS. I say, that is a fact, is it not?

Mr. FINNEY. It follows here in this printed document; but I did not print it in that order.

Mr. BRANDEIS. I understand that you are not the Government Printer.

Mr. FINNEY. This memorandum was prepared by myself in May which was the first action taken on that proposed letter to the Attorney-General.

Mr. BRANDEIS. Will you have the kindness to produce the original to this committee—the original memorandum and all original copies: that is, the original carbon copies thereof that may appear to be on file in the Land Office or elsewhere where you can obtain them?

Mr. FINNEY. I think I sent a copy to the Attorney-General along with the request for the opinion, and I presume that has been forwarded by him here. I will get what is on file and produce it.

Mr. BRANDEIS. I would like to have you look at those files of papers which the Attorney-General has sent to this committee with his letter of March 16, and see whether you find in it any copy of that memorandum.

Mr. FINNEY. I do not find it in the papers in this envelope; no, sir.

Mr. BRANDEIS. You speak about the papers in that envelope. I wish you would look at page 1933 of the record, on which, if I recall correctly, the letter of the Attorney-General is transcribed, and see whether you find it mentioned in the letter which transmits those documents.

Mr. FINNEY. No; it does not seem to be mentioned in that letter.

Mr. BRANDEIS. Well, you know it is not mentioned there, do you not?

Mr. FINNEY. No; it is not mentioned here.

Mr. BRANDEIS. Did you formerly hold the position which was held later by C. C. Heltman, as Chief of the Mineral Division?

Mr. FINNEY. No, sir; I was an examiner in the Mineral Division. I never was Chief of the Mineral Division.

Mr. BRANDEIS. You are familiar with the proceedings in the Mineral Division, are you not?

Mr. FINNEY. I know something about it; yes, sir.

Mr. BRANDEIS. Now, what, in the ordinary course of business, would happen in the Mineral Division in respect to each one of these 33 Cunningham claims?

Mr. FINNEY. After their clear listing?

Mr. BRANDEIS. No; I mean when they would first get there. I want to know when they would reach there, in the first place, in the course of human events.

Mr. FINNEY. The register and receiver would send up the papers with what are called the monthly reports at the end of the month in which the actual cash payments were made, and final certificates and receipts issued.

Mr. BRANDEIS. That is, those payments having been made the original ones—

Mr. FINNEY. Some of them in April, 1907.

Mr. BRANDEIS. In February, I think, is the earliest one. It appears on page 175, as I recall it, of the Senate document.

Mr. FINNEY. February 26th was No. 1.

Mr. BRANDEIS. Now, they were made—30 of them were made in February, March, and April, the thirtieth being on April 23. Now, in the ordinary course, the last of those 30 would have been transmitted at the end, or about the end, of April?

Mr. FINNEY. Yes, sir; from Juneau.

Mr. BRANDEIS. And should be in the office here some time in May?

Mr. FINNEY. Some time in May, in the ordinary course of business.

Mr. BRANDEIS. Now, after they arrived there, tell us precisely what would be done?

Mr. FINNEY. The returns are received in the Central Files Division, or Mail and Files Division.

Mr. BRANDEIS. You mean by the returns, that which the register and receiver sent?

Mr. FINNEY. All the papers that come here with the monthly returns.

Mr. BRANDEIS. What papers come?

Mr. FINNEY. If there were any homestead entries that came during the month, they would send those up—soldier's additional filings, or any sort of land filings which were required to be forwarded to the General Land Office.

Mr. BRANDEIS. With reference to those particular claims?

Mr. FINNEY. With reference to any land claims.

Mr. BRANDEIS. I am talking about these Cunningham claims.

Mr. FINNEY. In the coal cases?

Mr. BRANDEIS. I am referring to them—coal cases.

Mr. FINNEY. The record in the coal cases would be made up in Alaska of a copy of the declaratory statement, or of the notice of location, a plat of survey, field notes descriptive of the survey, a copy of the notice published in the newspaper as required by law, affidavits of the posting of the notice of the claim, a certificate by the register and receiver that no adverse claim had been filed, if such were the fact, or if a claim had been filed the papers relating to its final disposition in the court. There would also be what is designated as an application to purchase, on the form prepared for that purpose where the entryman is required to swear to certain statements, and there would be also the receiver's final receipt, which is a receipt for the money paid—the purchase money, and the register's final certificate of entry, which is the final paper issued.

Mr. BRANDEIS. Are those all the papers?

Mr. FINNEY. Those are all the papers which would ordinarily come up with the coal entry. If a special agent has filed any report concerning that particular entry, it might have been transmitted with the papers.

Mr. BRANDEIS. Should it have been transmitted with the papers?

Mr. FINNEY. If it was a report relating to the particular entry, I should say it properly should have been forwarded with the papers.

Mr. BRANDEIS. Any way, when these papers arrive, they are opened where?

Mr. FINNEY. They are opened in the Mails and Files Division of the General Land Office and stamped as having been received.

Mr. BRANDEIS. On a certain day?

Mr. FINNEY. Yes, sir. The letter of transmittal would be stamped.

Mr. BRANDEIS. And that letter would transmit those papers from the Mails and Files Division, and would it recite what papers were transmitted?

Mr. FINNEY. The abstract of the return would contain a list of all cases submitted during that month; yes, sir.

Mr. BRANDEIS. Is there a letter of transmittal from the Mails and Files Division?

Mr. FINNEY. No; the letter of transmittal is from the register and receiver.

Mr. BRANDEIS. That would contain a list of all papers that would come in in transmittal, would it?

Mr. FINNEY. No, sir; they would probably write a letter saying, "We herewith transmit reports for the month of April, 1909." They file monthly abstracts, or did at that time, of all entries allowed during the month. Those abstracts are kept in the General Land Office in files for that purpose.

Mr. BRANDEIS. And there would, of course, be a separate set of papers for each one of the 33 claims?

Mr. FINNEY. The papers would be tied up in bundles.

Mr. BRANDEIS. Now, what is done then in the mineral division?

Mr. FINNEY. And the papers in the mineral or coal entries would be transmitted by messenger to the mineral division. The cases would be entered upon a docket which is kept there for that purpose, called a coal-entry docket—or at least that was the practice when I was in the Land Office—and they would be entered in the order of their number, beginning with one and continuing consecutively. On this docket is entered the number, the name of the claimant, the

date of the entry, and a brief description or survey from the description of the land. The cases are put in their files then to await their examination in the regular order.

Mr. BRANDEIS. For what purpose are they examined, or on what points are they examined in the mineral division?

Mr. FINNEY. Well, the declaratory statement would be examined to see whether it had been executed as required by law, properly verified, whether it had been filed within the time prescribed by the law, and in a manner prescribed by the law; the plat and field notes would be carefully examined and compared to see whether the description of the claim was accurate—that is, whether the description on the plat corresponded with the field notes; the application to purchase would be examined to see whether it contained the statement that the claimant is required to make under the law and regulation; whether it was properly verified; the published notice would be compared with the plat or field note to see whether it contained the correct description, and the receiver's description examined to see whether they put in the proper amount of acreage included in the claims, and if any defect were found a letter would be prepared directing them to call on the claimant to furnish the additional evidence or, in the meantime, if any protest or affidavit of contest had been filed by an individual, they would probably take that up, if the facts warranted it, and order a hearing. Now, that is a description of the ordinary course on receipt of a case, and the ordinary examination which is given to it.

Mr. BRANDEIS. Was there anything in those Cunningham cases which resulted in any action, or called for any action out of the ordinary?

Mr. FINNEY. Yes, sir; the coal lands in Alaska had been withdrawn November 12, 1906, from all disposition, and we understood it to hold up existing claims. However, on May 16, 1907, Secretary Garfield approved the circular which I mentioned this morning which permitted those claimants to proceed, but required a report from the special agent as to their validity, and of course none of those claims would have been allowed to pass to patent without some report from the agent as to their validity.

Mr. BRANDEIS. Is there anything else?

Mr. FINNEY. Yes, sir; there had been an order issued in September, 1907, by Assistant Commissioner Dennett to the effect that coal entries should not be passed to patent—the patent should not issue—until after they had been clear listed or O. K.'ed by Division P in the Special Service Division.

Senator FLETCHER. Was that order modified or abrogated, Mr. Finney, by the act of May, 1908?

Mr. FINNEY. The order of suspension?

Senator FLETCHER. The order made by the commissioner with reference to the Alaska coal. You say he made an order that they could not be passed to patent without being examined and reported on by the special agent. I say was that order superseded in his mind in any way by the act of May, 1908?

Mr. FINNEY. I do not know; I do not understand that it has been.

Senator FLETCHER. Do you remember any conferences had with the commissioner and First Assistant Secretary of the Interior with reference to those Cunningham cases?

Mr. FINNEY. I have testified with reference to a conference with First Assistant Secretary Pierce in May, 1909, when ex-Governor Moore was here in Washington.

Senator FLETCHER. Was Mr. Dennett present?

Mr. FINNEY. No, sir.

Senator FLETCHER. The question was, Do you remember any conferences in which he was present in reference to the Cunningham claims?

Mr. FINNEY. No, sir.

Senator FLETCHER. What did he have to do in connection with those claims? Was it not proper to get his opinion on the matter, as the land commissioner, before passing on it directly by the Secretary.

Mr. FINNEY. Ordinarily the cases in the General Land Office would be acted upon by the commissioner. He would order the hearing without any specific direction from the department, but in this particular case ex-Governor Moore had called at the department, had been referred by Mr. Ballinger to the First Assistant Secretary, Mr. Pierce, for opinion as to the status of his claims, and Mr. Pierce had me investigate the claims and report to him, and we had a discussion right there and then with ex-Governor Moore. But it was contemplated that when the formal order for hearing should be written it should be written in the General Land Office and signed by Commissioner Dennett, which was actually the fact later in the summer.

Senator FLETCHER. But during this time you did not consult Commissioner Dennett?

Mr. FINNEY. No, sir; I found Mr. Glavis in the Land Office and Mr. Glavis accompanied me back to Secretary Pierce's office and carried with him this Cunningham journal, or a copy of it, and some other papers, and Mr. Glavis and myself talked with Secretary Pierce.

Senator FLETCHER. Did you know at that time what the views of the commissioner were with reference to the validity of the claims under the act of 1908?

Mr. FINNEY. No; I have never discussed the Cunningham claims with Mr. Dennett, or, in fact, with anyone else prior to this time; that is, with reference to the act of 1908 or with reference to passing them to patent, that I can recall. I knew the entries were in the Land Office and I knew they were suspended pending an investigation by the special agent.

Senator FLETCHER. It appears from Governor Moore's testimony that Mr. Dennett had assured him that the claims could be patented under the act of 1908?

Mr. FINNEY. Yes, sir. I heard that testimony yesterday.

Senator FLETCHER. But you did not know of your own knowledge that that was his view at that time?

Mr. FINNEY. No, sir; I did not.

Senator FLETCHER. That is all.

Mr. BRANDEIS. Mr. Finney, I was asking you about anything unusual in the proceedings, and you mentioned that in September, 1907, there was a certain letter written by Mr. Dennett, as assistant commissioner, to the chief of Division N. I ask you whether this is the letter that I now show you?

Mr. FINNEY. Yes, sir; that seems to be a copy of it.

Mr. BRANDEIS. I wish, by the way, that you would produce the original letter, Mr. Finney. This letter is as follows:

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, September 1, 1907.

CHIEF OF DIVISION N:

Before approving for patent any Alaska coal-land application or entry you will have the same clear listed as to Division P. Unless otherwise directed by Division P it will be sufficient to furnish that division with the number of the application or entry with the name of the applicant or entryman, and the attorney in fact, if any.

Very respectfully,

(Signed) FRED DENNETT,
Assistant Commissioner.

You happen to remember this letter. Did you have any knowledge of this situation at that time?

Mr. FINNEY. No, sir.

Mr. BRANDEIS. When did you learn that this letter existed?

Mr. FINNEY. I learned it since this investigation began, I think.

Mr. BRANDEIS. How early in the investigation?

Mr. FINNEY. I do not know that I can fix the time. I think it was after the copies of the patent and of the records of Division B were called for. I found that certain cases had been referred down to Division B for the issuance of the patents, and that they were later recalled by Division N, but on looking up to see the reason I found that Mr. Heltman, chief of Division N, in obedience to this order, had, when he sent the case down for patent, advised Mr. Schwartz of his action, and Mr. Schwartz had indorsed on the letter the notification or an order to hold them up.

Mr. BRANDEIS. Now, in view of that letter of September 1, 1907, there would be, according to ordinary practice, some notification by Division N to Division P of each entry as it was ready for consideration by Division P, would it not?

Mr. FINNEY. Yes, sir.

Mr. BRANDEIS. That is, there would be the clear listing—if that is the expression used—from Division N to Division P?

Mr. FINNEY. Unless a favorable report had previously been received from the chief of the special service. If such a report had not been received, it would have been the duty of the chief of the mineral division to notify Mr. Schwartz of his action, that the entry was ready for approval.

Mr. BRANDEIS. There would be, I assume, in Division N some book or docket or whatever it may be called, in which there would be recorded the action of Division N on each one of those 33 claims.

Mr. FINNEY. It is customary to note on the docket opposite the number of the entry the words "approved, such and such a date," if they are approved for patent and had gone out from the division. I do not know that they keep any other record except this patent list which I referred to this morning.

Mr. BRANDEIS. That list, with the mark and date of approval, would be a complete record?

Mr. FINNEY. That would be a record.

Mr. BRANDEIS. And consequently there would be transmitted—except as to any cases that had been clear listed from Division B—under this letter of September the first, a notification of each clear

listing in Division N, would there not? That is, each entry ought to be reported, and in ordinary course would be reported to Division P.

Mr. FINNEY. It would be; yes, sir. Of course, this order, Mr. Brandeis, was addressed to the Chief of Division N. If it had been addressed to—

Mr. BRANDEIS. That was the proper person to address it to, was it not?

Mr. FINNEY. Yes, sir.

Mr. BRANDEIS. Now, consequently, the chief of N would report to chief of P from time to time each claim as it was disposed of or clear-listed in N.

Mr. FINNEY. Yes, sir; unless it had been previously clear listed by Division P.

Mr. BRANDEIS. Now, in my letter of March 31, 1910, which appears on page 520, I asked for all original papers of any kind received by and sent by that division relating to all Cunningham claims and all other papers now or formerly on file in Division N relating to such claims, and copies so far as originals are not available, and in response to that call I have received only the following papers: The letter of November 5, 1907, Helpman to Schwartz, which appears in the list—

Mr. FINNEY. It is on page 461 of Senate document.

Mr. BRANDEIS. Then the letter of December 6, 1907, I think you have there also.

Mr. FINNEY. Yes, sir.

Mr. BRANDEIS. Where does that appear in the Senate document?

Mr. FINNEY. On page 462 of Senate document.

Mr. BRANDEIS. The letter of January 3, 1908, which appears in Senate document—

Mr. FINNEY. On page 462.

Mr. BRANDEIS. And the letter from Schwartz to Division N, these others being from Division N to Schwartz; another letter of Schwartz to Division N of January 4, 1908, which appears in Senate document—

Mr. FINNEY. On page 462.

Mr. BRANDEIS. And a letter of Schwartz to Division N of January 23, 1908, which appears—

Mr. FINNEY. On page 464 of Senate document.

Mr. BRANDEIS. Now, upon examination of the letters of November 5, December 6, and January 3, which report the clear listing, you will note that those claims cover, out of the full 33 claims, only how many—8, do they not out of 33?

Mr. FINNEY. Eight claims are described in the three letters of November 5, 1907, December 6, 1907, and January 3, 1908.

Mr. BRANDEIS. Those are all of the reports on the claims out of the whole number of 33 which you have produced. Where are the others?

Mr. FINNEY. I find under date of January 4 here a letter of advice from—

Mr. BRANDEIS. That is the other way.

Mr. FINNEY. And I stated in my testimony that if Division P clear listed them before they were acted upon in the Mineral Division it would not be necessary to write one of those letters to the Special Service Division.

Mr. BRANDEIS. Do you wish it to be understood that you testify, as a matter of your knowledge, to the fact that of those 25 claims that are mentioned in Mr. Schwartz's letter to Division N of January 4, only 8 had at that time been clear listed by the Mineral Division?

Mr. FINNEY. I think you are getting mixed on terms there. The eight entries which were reported by Mr. Heltman, chief of the Mineral Division, to Mr. Schwartz, chief of Division P, were entries which had been taken up in the Mineral Division and examined and the ordinary proofs found regular. They were ready for approval so far as the Mineral Division was concerned, but, having Mr. Dennett's order in mind, Mr. Heltman advised Mr. Schwartz that those eight cases were all ready for patent unless he had some objection to offer, or that they would be held until he clear listed them, to put it in another way. Now, it seems that Mr. Schwartz put upon those letters an indorsement to hold them pending further advice, and they were held up. The other 25 Cunningham entries do not appear to have been reported by Mr. Heltman to Division P, and so far as I know they had not been approved for patent. I am not familiar enough with them to say whether they had been approved for patent or not, but I do find that on January 4 Mr. Schwartz, from his end of the line, sent word to Mr. Heltman that 25 of those claims may go along.

Mr. BRANDEIS. Now, I want you to produce the records that will show what claims, besides those eight, which were reported in the three letters, what claims, if any, besides those, had been finally passed upon in the Mineral Division at the time this letter of January 4, 1908, was written, and I desire further to know specifically whether and when they were so disposed of, if they were disposed of in Division N, and I desire further to know what letters or notifications, if any, were sent by Division N to Division P specifically. I desire to have literally complied with the request contained in this letter of March 31, 1910, on page 2520, asking for the papers and the reports upon this question.

Mr. FINNEY. I do not know whether that has been complied with or not.

Mr. BRANDEIS. These papers that I have here are all that have come?

Mr. FINNEY. Yes, sir.

Mr. BRANDEIS. There must be some others on the files.

Mr. FINNEY. I will be very glad to make a search for them and will produce them if there are any such papers.

Mr. BRANDEIS. You have stated that your first recollection, as I recall it, of having anything to do with the Cunningham cases was when you were asked some opinion in November or December, 1907, whether an agreement or combination made after entry, but before patent, was legal.

Mr. FINNEY. No; I initialed the simple letter.

Mr. BRANDEIS. Nothing besides the simple letter?

Mr. FINNEY. No, sir; and the next time that I had anything to do with the matter, so far as I know, was the occasion which you have mentioned.

Mr. BRANDEIS. When, as near as you can fix the date, was that request for an opinion made to you?

Mr. FINNEY. As near as I can recollect, it was in the early part of November, 1907, but I do not remember the date. It was just a verbal request. The question was asked me by Commissioner Ballinger, and I think Mr. Schwartz—I am not sure—but I think Mr. Schwartz was present, and I think Mr. Dennett was also present in his room.

Mr. BRANDEIS. And you answered the question offhand, I suppose? It was not the subject of any writing?

Mr. FINNEY. No, sir. I was familiar with the decisions on that subject. I understood it thoroughly.

Mr. BRANDEIS. And you are not able to fix with greater accuracy the date of the circumstances of that inquiry?

Mr. FINNEY. No, sir; I simply recall that as having occurred in the early part of December, and it probably was fixed on my mind because I was somewhat surprised that Secretary Ballinger should have entertained an erroneous opinion as to the law on that subject.

Mr. BRANDEIS. He did indicate to you that he supposed the law was the other way?

Mr. FINNEY. That was my impression; yes, sir.

Mr. BRANDEIS. You stated, if I remember correctly, that the next thing that you had to do with it was in aiding some one in Division P in drafting the patent, and that was in the early part of January.

Mr. FINNEY. That was about a month later, I think—the early part of January, 1908. Mr. O'Connell, the assistant chief, asked me.

Mr. BRANDEIS. Now, I show you the manuscript draft of a patent which has been introduced in evidence, and will ask you in whose handwriting that draft is?

Mr. FINNEY. That is a question I can not answer. It is not mine; it is not Mr. O'Connell's. Presumably it is one of the clerks in the patent writing division.

Mr. BRANDEIS. You see on it certain pencil memorandum. Can you state whose handwriting that is?

Mr. FINNEY. No, sir; these were presumably made when the patent was being revised.

Mr. BRANDEIS. The patent to which I refer appears in the record on page 826 of the testimony.

Mr. FINNEY. My conference with Mr. O'Connell, as I have related, had to do with the general form and style of the patent. I did not write out the draft myself.

Mr. BRANDEIS. The patent which you have been examining now is the manuscript patent. Will you turn now to the typewritten draft of patent that follows it; it appears on page 827 of the record. Will you please tell us in whose handwriting that is—the certain interlineations in pencil?

Mr. FINNEY. I can not tell you that. I am not familiar with the handwriting of those patent clerks.

Mr. BRANDEIS. I show you the original and the other patents, which were finally written out for signature and that appear in the record in pages 829 to 835, together with the slips of transmissal showing the recall from Division B, and will ask you in whose handwriting those slips are?

Mr. FINNEY. The slips?

Mr. BRANDEIS. Yes.

Mr. FINNEY. I can not tell you; presumably some one in Division B. It says "withdrawn by N., January 23, 1908, susp."

Mr. BRANDEIS. Suspended, I suppose that means?

Mr. FINNEY. Yes.

Mr. BRANDEIS. Now, is Division B what is sometimes called the "adjudicating division?"

Mr. FINNEY. No, sir; B is the patent-writing division.

Mr. BRANDEIS. What is known by the term "adjudicating division," which I find Mr. Schwartz uses?

Mr. FINNEY. The adjudicating division is one to which normally the entry would be sent for examination in the regular order, and the division that would pass upon the legality and regularity of the proofs submitted in the mineral division. The adjudicating division would be N, the mineral division; B would be the patent-writing division.

Mr. BRANDEIS. You do not recall any of those handwritings there?

Mr. FINNEY. No; these are typewritten forms with some pencil corrections.

Mr. BRANDEIS. After your assistance to the writer of this patent, or the original draftsman—

Mr. FINNEY. Assistant chief of the division, Mr. O'Connel, whom I advised.

Mr. BRANDEIS. You had nothing to do with the Cunningham cases until when?

Mr. FINNEY. As I stated yesterday, I looked up the coal records in the summer of 1908 when getting some data for Secretary Garfield's report, but I simply found then that the entries were of record and pending. I did not look into the cases.

Mr. BRANDEIS. And you found then that the 33 claims had been proved up?

Mr. FINNEY. Yes.

Mr. BRANDEIS. And that they were the only Alaska claims that had been proved up?

Mr. FINNEY. I think there had been a few more proved up. I am not certain about that. At any rate I advised Secretary Garfield as to the results, and it appears in his report for 1908.

Mr. BRANDEIS. Whatever the facts are?

Mr. FINNEY. Yes, sir.

Mr. BRANDEIS. Now, after that, what was the next?

Mr. FINNEY. Well, in the spring of 1909, March, First Assistant Secretary Pierce gave a hearing to Mr. Joslin, representative of the American Mining Congress, on the Alaska coal situation.

Mr. BRANDEIS. That was on March 9?

Mr. FINNEY. Yes, sir. I was called to sit in that hearing, and I think Mr. Joslin, or some other Alaskan, mentioned the fact that 33 coal entries had been made but no patents issued. Mr. Pierce asked me as to why the patents had not issued. I told him the entries were suspended pending investigation by special agents.

Mr. BRANDEIS. Then your participation in that hearing was largely as auditor merely?

Mr. FINNEY. Yes, sir.

Mr. BRANDEIS. And after that what was the next action or participation in any way in the Cunningham cases?

Mr. FINNEY. In May, about the middle of May, 1909, First Assistant Secretary Pierce called me to his room, introduced me to ex-Governor Moore—

Mr. BRANDEIS. As you stated to Mr. Vertrees yesterday?

Mr. FINNEY. Yes, sir.

Mr. BRANDEIS. As I recall that, you had a conference with him on one day and on the day following it you went for Mr. Glavis.

Mr. FINNEY. We did not discuss the cases very fully the first day because neither Mr. Pierce nor I knew the exact status. That day I went to the Land Office, found Mr. Glavis, looked into the status of the cases, returned with him to Mr. Pierce; and Mr. Glavis, Mr. Pierce and I talked them over in the afternoon, as I recall. On the next day Governor Moore came back, and Mr. Pierce told him, as I have related, that the hearing would be ordered.

Mr. BRANDEIS. You fix that date about the middle of May. It appears in evidence that the Pierce opinion was dated May 19.

Mr. FINNEY. That is correct.

Mr. BRANDEIS. Were your conferences, or either of them, with ex-Governor Moore before or after the writing of the Pierce opinion?

Mr. FINNEY. To the best of my recollection the conference with Governor Moore was prior; that is, the two conferences I have just described were prior to the rendition of the Pierce opinion and prior to the receipt of the proposed letter to the Attorney-General. That is the best of my recollection.

Mr. BRANDEIS. Did you have any other conferences with ex-Governor Moore?

Mr. FINNEY. Yes; as I told you a short time ago; after the Pierce opinion had been rendered, I think on the 20th or 21st of May, Governor Moore came into the office and I took him to Mr. Pierce's room and talked with him about the act of 1908.

Mr. BRANDEIS. That is, you had a third conference with him?

Mr. FINNEY. He made three visits to Mr. Pierce's room. The first visit was not a conference.

Mr. BRANDEIS. That was short?

Mr. FINNEY. Yes.

Mr. BRANDEIS. And that first visit was on the same day that you got Mr. Glavis to go over to see Mr. Pierce and go into these matters with you?

Mr. FINNEY. That is my recollection; yes, sir.

Mr. BRANDEIS. The second day Glavis was not present?

Mr. FINNEY. He was not present.

Mr. BRANDEIS. The third day Mr. Glavis was not present?

Mr. FINNEY. On May 20 and 21 Glavis was not present.

Mr. BRANDEIS. Those later visits, that one visit was, you say after the Pierce opinion?

Mr. FINNEY. Yes, sir; on the 20th or 21st.

Mr. BRANDEIS. Now, was that all?

The VICE-CHAIRMAN. Mr. Brandeis, will you suspend a moment? There is a witness summoned from Alaska at the suggestion of Judge Madison, and as it is desirable for him to return as soon as possible we might have him come in at this time, and suspend the examination of Mr. Finney.

Mr. BRANDEIS. Certainly.

Mr. MADISON. It is hardly correct for the chairman to say that he was brought here at my suggestion. He was brought here at the suggestion of the committee. I made the motion, and it was agreed to unanimously.

The VICE-CHAIRMAN. I understand that. I did not mean that you had subpoenaed him. Of course, the committee had to sanction it. Is Mr. Dudley here?

(Mr. Dudley was not present.)

The VICE-CHAIRMAN. Then you may proceed with Mr. Finney.

Mr. BRANDEIS. How many days elapsed between the second of these visits of ex-Governor Moore and the third one which took place, as you say, on the 20th or 21st?

Mr. FINNEY. I do not remember exactly. I think five or six days; perhaps four or five days. I am not sure about that, Mr. Brandeis.

Mr. BRANDEIS. Well, are you sure that you had any conference with ex-Governor Moore before the Pierce opinion was written?

Mr. FINNEY. Yes; that is my recollection that I had. I am quite sure that I had.

Mr. BRANDEIS. You do feel pretty sure of that?

Mr. FINNEY. That is my recollection, yes, sir; but I can not fix the exact date. I know that it was about the middle of the month of May.

Mr. BRANDEIS. Well, now, you say that on the 25th of May you had a conversation with Secretary Ballinger in which he told you that in the morning of that day he had seen the Attorney-General.

Mr. FINNEY. He had a conversation with me; he called me to his room and stated that he had been talking with the Attorney-General.

Mr. BRANDEIS. That morning?

Mr. FINNEY. That morning.

Mr. BRANDEIS. Well, now, was this the morning that he talked with you?

Mr. FINNEY. Why, I think it was—no, it must have been sometime between 12 and 3 o'clock.

Mr. BRANDEIS. At that time?

Mr. FINNEY. Yes; he had been, as I recall it now, he had been to the Cabinet meeting and it was upon his return.

Mr. BRANDEIS. Upon his return from the Cabinet meeting?

Mr. FINNEY. Yes; he said he had a talk with the Attorney-General about this matter.

Mr. BRANDEIS. When did he leave for the Cabinet meeting?

Mr. FINNEY. Well, he usually goes up about half-past 10 or 11 o'clock in the morning. I presume he did at that time.

Mr. BRANDEIS. He did then?

Mr. FINNEY. I do not know; I do not remember the hour.

Mr. BRANDEIS. The conversation was upon his return?

Mr. FINNEY. That is correct. I had not informed him as to the rendition of the opinion. I do not know where he got the information.

Mr. BRANDEIS. But he had the information?

Mr. FINNEY. He knew that we had rendered an opinion; yes.

Mr. BRANDEIS. But not from you?

Mr. FINNEY. No, sir.

Mr. BRANDEIS. You do not know from where he got the information?

Mr. FINNEY. No; I do not know personally.

Mr. BRANDEIS. And is there anything in regard to this conversation of Mr. Ballinger with you that you recall that has not been stated?

Mr. FINNEY. No; I do not recall. He directed me to prepare the matter for transmission to the Attorney-General. He did not tell me whether the Attorney-General had advised him to have it submitted or whether he had asked the Attorney-General for permission to submit it. He stated that he had had a conversation with the Attorney-General, and he wanted the case transmitted to him for an opinion, and for me to make up the case for transmittal.

Mr. BRANDEIS. And that was all that he said, so far as you can recall?

Mr. BRANDEIS. Did he at that time discuss with you the letter from ex-Governor Miles C. Moore?

Mr. FINNEY. On the 25th—the date of this conversation?

Mr. BRANDEIS. The date of this conversation.

Mr. FINNEY. I do not think he did. He did speak to me about receiving a letter from ex-Governor Moore.

Mr. BRANDEIS. When did he have that conversation with you?

Mr. FINNEY. Well, it was some time between the 15th and 25th of May, I can not recall the exact date. It was the letter where Governor Moore, I think, had mentioned taking the matter up with the President, or having some Senator take the matter up with the President, and Mr. Ballinger called my attention to that.

Mr. BRANDEIS. Well, when was that he had that conversation with you about taking the matter up with the President?

Mr. FINNEY. I do not think that I can fix the date. I can fix the date of the other matter, because I prepared and mailed the case to the Attorney-General on the 26th of May, that is the way I fix the 25th as the date that he directed me to prepare it. But I have no landmark to guide me as to the other date, and I do not for that reason remember the exact date.

Mr. BRANDEIS. You prepared another letter, did you not, on the 27th, the letter to Miles C. Moore?

Mr. FINNEY. I do not think I wrote that letter. I said this morning that I did, but I think that I was mistaken about that.

Mr. BRANDEIS. You will produce original carbons—the office copy?

Mr. FINNEY. Yes, sir; I will. I want this straightened out.

Mr. BRANDEIS. If the Chair will permit, I will defer the cross-examination of Mr. Finney until he has produced these various papers that I want to inquire about further.

Mr. FINNEY. I will bring them up at the next session.

Mr. BRANDEIS. I would like, Mr. Finney, instead of bringing them up at the next session, if you will send them to the committee as soon as you get them, so that I may examine them before the next session and not take up the time of the committee. I would like to have them sent up here as soon as I can get them.

Senator FLINT. I understand, Mr. Brandeis, all the papers you have asked Mr. Finney for are covered by previous written requests you have made?

Mr. BRANDEIS. They are covered by previous written request except this carbon copy I am talking about.

Senator FLINT. I think you ought to put that in such shape that it will be called for by the committee and not produced by this witness.

Mr. BRANDEIS. I will do that and present it to Mr. Sleman.

The VICE-CHAIRMAN. Is Mr. Dudley in the room now? Mr. Pepper, would you like to cross-examine the witness?

Mr. PEPPER. I have a few questions on my end of the case which I would like to ask Mr. Finney.

The VICE-CHAIRMAN. Very well; proceed.

Mr. PEPPER. Mr. Finney, you have given an explanation respecting the relations between the Department of Agriculture and the Department of the Interior in the matter of the Indian cooperative agreement?

Mr. FINNEY. Yes, sir.

Mr. PEPPER. There are one or two points that I wish you would clear up for us in this matter. Am I right in understanding that under that cooperative agreement there were in the first place certain persons on the rolls of the Forestry Service who rendered service in the Indian Office upon Indian reservations, and in so rendering service were subject to the direction and control of the Forester?

Mr. FINNEY. I understand that that was the actual fact; yes, sir. Some at least of the force were Forest Service employees who were working on Indian reservations and who were paid by the Forestry Service, the Forestry Service being later reimbursed for the expenses incurred by the Department of the Interior.

Mr. PEPPER. Now, as to that class of persons, do you understand, or is it your desire that the committee should understand, that any difficulty or disputable question arose that was either fiscal or administrative?

Mr. FINNEY. None whatever.

Mr. PEPPER. That is to say, there is no doubt, is there, that the employees of one department, carried on its roll, might render service, related in kind, to the department in which he belonged for the benefit of another department, receiving his pay from his own department, and that that payment might subsequently be made the subject of reimbursement out of the appropriation made to the department for which he rendered the service?

Mr. FINNEY. That is a practice which I understand has been approved by the Comptroller of the Treasury.

Mr. PEPPER. Referring to that opinion of the comptroller of September 3, I think it was, 1908, which has been under discussion here, do you understand that there is anything in that opinion which questions or invalidates such an arrangement as I have indicated to you?

The VICE-CHAIRMAN. Do you not mean in 1909 instead of 1908?

Mr. PEPPER. No; 1908.

Mr. FINNEY. In 1908, Mr. McCall, on page 95 of Senate document.

Mr. PEPPER. You may remember, Mr. Chairman, that the Indian cooperative agreement was made in January, 1908, and abrogated in July, 1909, and then the comptroller's opinion was in September, 1908.

Mr. FINNEY. Now, this shows:

The detail of an employee from one department to another, with or without an agreement between the heads of the departments concerned, to perform duties which are not connected with the department from which detailed, and the payment of his salary from appropriations for, or moneys under the control of, the department to which detailed is unauthorized (14 Comp. Dec., 294), unless express authority by statute is granted therefor, and I am not aware of any statute that either expressly or impliedly gives general authority to make such details between the Agricultural and Interior departments.

Mr. PEPPER. What do you understand that to mean just as a business proposition. What is the significance of that decision?

Mr. FINNEY. Well, I understand that the comptroller says that a clerk employed in the Bureau of Forestry and upon its rolls could not,

either with or without an agreement between the heads of the departments, be transferred to the Indian Office to perform duties pertaining to the Indian work and be paid out of the appropriations of the Indian Office.

Mr. PEPPER. Now that must be a self-evident proposition, must it not, that a man carried on the roll of the Forestry Service and rendering services in the Department of the Interior could not be treated as if he were on the pay roll of the Department of the Interior and paid as men on that pay roll are paid. That is all that that means, is it not?

Mr. FINNEY. I do not know that I quite follow you, Mr. Pepper.

Mr. PEPPER. Perhaps my question was a little blind. What I mean is this. I understand your interpretation of that opinion, and it seems to me to be clearly right. The comptroller has decided that where a man has been carried on the pay roll of the Forestry Service, but is actually rendering services in a clerical capacity in the Indian Office, he can not get his pay in the first instance out of the Indian appropriations as he would get it if he were on the pay roll of the Indian Office.

Mr. FINNEY. I think that is the effect of this opinion.

Mr. PEPPER. Do you know of anybody in your whole experience with the matter to which your testimony is related who has ever contended to the contrary of that opinion?

Mr. FINNEY. Why—

Mr. PEPPER. Of course the question was submitted to the comptroller.

Mr. FINNEY. The question was submitted to the comptroller with the evident purpose of making such an assignment if permissible.

Mr. PEPPER. Surely. And has there ever been any dispute or question raised respecting the propriety of that opinion or its applicability to the state of facts that the comptroller was dealing with?

Mr. FINNEY. Not to my knowledge; no, sir.

Mr. PEPPER. On the other hand, do you understand that that opinion has any relation whatsoever to the propriety of the arrangement that you first described in answer to my question, namely, the arrangement by which a person carried on the pay rolls of the Forestry Service, and rendering services related to his special experience and training for the benefit of the Indian Office, and being paid in the first instance by the Forestry Service, might have that disbursement to him by the Forestry Service treated as a proper subject of reimbursement out of the Indian appropriation to the Forestry Service?

Mr. FINNEY. I understand that to have been allowed by the comptroller and no question raised.

Mr. PEPPER. And in none of your investigations, or in case of consideration that you have given to this subject, have you regarded the comptroller's opinion of September 3, 1908, as having to do with that aspect of the matter?

Mr. FINNEY. No; not with that particular aspect of the case, as that was not the case, as I understood it, that I had before me.

Mr. PEPPER. I am coming to that in a moment. It is a fact, is it not, that reimbursements by the Indian Office out of the Indian appropriations have been made up until quite a recent time, I mean within the limits of the year 1910, to the Forestry Service in respect to disbursements made by the Forestry Service for services and work done by foresters on Indian reservations?

Mr. FINNEY. Yes, sir; in fact our letter to the Secretary of Agriculture invited just such cooperation.

Mr. PEPPER. Now, were there or were there not under the Indian cooperative agreement other classes of persons who were employed?

Mr. FINNEY. And paid for forestry work done on the Indian reservation?

Mr. PEPPER. I mean now the class of persons other than forestry service men carried on the pay rolls of the Forestry Service, rendering and discharging duties under the direction of the Forester for the benefit of the Indian Office.

Mr. FINNEY. I do not think I can answer that question. What I had up for consideration was the situation outlined here in Mr. Valentine's letter and in my memorandum.

Mr. PEPPER. Well, what is that situation?

Mr. FINNEY. I knew there had been some work done by forest officers and their services reimbursed, but as to whether they had other men under their control prior to 1909, I do not know.

Mr. PEPPER. What was the situation, briefly, that you understood yourself to be dealing with when you gave the opinion that under the act of March 3, 1909, it was illegal to carry out the cooperative agreement?

Mr. FINNEY. March 3, 1909, Congress had passed this appropriation of \$100,000 for the care of timber on the Indian reservation, to be expended under the supervision of the Secretary. At about the 1st of July, 1909, Mr. Valentine submitted for approval this letter, which was accompanied by a list of forest guards and other officers and employees which he proposed, as I understood it, to appoint and place upon his roll.

Mr. PEPPER. Yes.

Mr. FINNEY. To place upon the rolls of his office to do this timber work upon the Indian reservation, and he said in the letter that they were to be handled under the cooperative agreement.

Mr. PEPPER. Well, had you any doubt, Mr. Finney, but that it was entirely proper to pay out of the Indian appropriation the salaries of persons who were to be employed by the Indian Office and to render service on Indian reservations in connection with the forest interests?

Mr. FINNEY. I had no doubt whatever about the propriety of paying for the services out of the Indian appropriation.

Mr. PEPPER. So that the only question that arose with respect to those people was not a fiscal question at all. It was an administrative question as to whether it was desirable for persons on the roll of the Indian Office, paid as its employees and doing Forestry Service work, should be acting under the direction of the forester and responsible only to the Forest Service; is not that so?

Mr. FINNEY. I do not know whether I could say it was not a fiscal question; that was my view, that the men on the rolls of the Indian Office, paid for out of the appropriation made specifically to the Indian Office, could not lawfully be placed under the control of an officer in any other department of the Government.

Mr. PEPPER. But when I used the word "fiscal" I had reference to this thought, that there could be no doubt as to the propriety of the payment of the salaries of those persons out of the Indian appropriation as long as they were on the pay roll of the Indian Office—the administrative question remained as to whether it was expedient that

those men should act under the direction of the Forestry Service isn't that all?

Mr. FINNEY. I think there might have been a question raised by the comptroller if he had known that the men were in fact under the direction of another department and were being paid out of an appropriation made for the Interior Department. There might have been a fiscal question raised by him.

Mr. PEPPER. Well, what possible difference could it make to the comptroller whether John Smith, working on an Indian reservation under the direction of the forester and responsible to him, was paid in the first instance out of the forestry appropriation—the forest appropriation then being reimbursed in respect to that payment—or whether John Smith, working in the same place under the same direction carried on the pay roll of the Indian Office, was first paid out of the Indian appropriation; what possible difference as a fiscal question could it make?

Mr. FINNEY. I am not undertaking to give the reasons which actuated the comptroller in permitting reimbursement for services rendered and which would move him in denying or holding illegal such an arrangement as is contemplated in his opinion of September 3, 1908?

Mr. PEPPER. If you understand—I beg your pardon.

Mr. FINNEY. I am just taking the rulings as I find them and as I understand them.

Mr. PEPPER. Of course I am not asking you to anticipate the comptroller's decision, but you are the man who worked on this thing and have given testimony in respect to it. I want to probe your mind on the thing. I want to know what possible fiscal question can be presented for the decision of the comptroller in a case in which the employee in question is carried on the roll of the Indian Office and is paid out of the Indian appropriation.

Mr. FINNEY. Well, there is a question that we might have submitted to them, Mr. Pepper. We might have asked them whether it was lawful to pay employees out of this appropriation on the Indian Office rolls, the employees under the direction of another department. There are many questions submitted to the comptroller in connection with the disbursement of money.

Mr. PEPPER. But you never did submit that question to him?

Mr. FINNEY. No; I never did submit that question to him. I thought the law was very plain myself, aside from the comptroller's decision, and I regarded this comptroller's decision as bearing upon the matter in principle. I did not regard it as a like case in all particulars.

Mr. PEPPER. Now, Mr. Finney, think of that for a moment. What possible relation to the administrative question which we are now considering, what possible relation to that question, did the comptroller's opinion of September 3, 1908, have when that opinion, as you have explained it, had to do with the impropriety of paying out of the Indian appropriation a man who was carried on the pay rolls of the Forestry Service?

Mr. FINNEY. Well, in the first place, this decision referred to the cooperative agreement, and that attracted my attention. When I was looking it up, the said cooperative agreement, I found it dealt with the detail, or proposed detail, of a clerk from the Forestry Bureau

to the Indian Office. Now, he would be under the control, I would take it, of the Indian Office while he was working there and being paid from their appropriation. The comptroller said that was illegal. Here we had a case where it was proposed to appoint a list of employees on the Indian rolls and put them under the control of an officer of the Department of Agriculture. To my mind that was unwarranted and illegal, and I prepared this memorandum which appears in Senate document.

Mr. PEPPER. Isn't the gist of the comptroller's opinion simply this, that you could not in the first instance pay money out of an appropriation to another department for the purpose of meeting the salary of somebody that is not on the pay roll of that department?

Mr. FINNEY. Yes, sir; he says there is no authority to make any such detail between the two departments.

Mr. PEPPER. Certainly; of course.

Mr. FINNEY. This I thought would be, in effect a detail of our employees to the Agricultural Department, a defacto detail at least.

Mr. PEPPER. But details as such are not objectionable, are they? Take, for instance, the case of Mr. Lawler; what is his status in the Department of the Interior?

Mr. FINNEY. Well, he occupies an office created by law, as I understand it. It is a statutory office, a part of the Department of Justice.

Mr. PEPPER. Yes. He is carried on the pay rolls of the Department of Justice and is loaned to the Department of the Interior to act as Assistant Attorney-General to that department.

Mr. FINNEY. Yes, sir.

Mr. PEPPER. You have a number of lawyers in the Department of the Interior carried on the rolls rendering legal service under Mr. Lawler and responsible directly to him and under his supervisory power, have you not?

Mr. FINNEY. Yes; they are under him. I think that is hardly exactly correct. They are really under the control of the Secretary of the Interior.

Mr. PEPPER. I was trying to use Mr. Pierce's phraseology.

Mr. FINNEY. But Mr. Lawler does, of course, exercise supervision over the force.

Mr. PEPPER. Well, is this a correct statement of it, as I think it was testified to by Mr. Pierce? Have you page 2960 of the record? He says:

Following that up, we have a law force of about 25 persons, under the direction and supervisory control of the Attorney-General for the Interior Department.

That is a correct statement, is it not?

Mr. FINNEY. Yes, sir; but he does not make their appointments. He can not sign a commission to appoint a man on the force, or he can not dismiss a man from the force.

Mr. PEPPER. Of course not. Those persons are on the pay rolls of the Interior Department, and they are, properly speaking, employees of the Interior Department, who are paid out of this appropriation?

Mr. FINNEY. Yes; they are not sent to another department or placed under control of another department. In this case Mr. Lawler comes to the Interior Department.

Mr. PEPPER. So that the result of it is that the employees of the Interior Department, carried on its rolls and paid out of its appro-

priations, are subject to the direct and supervisory control of an officer of the Department of Justice, carried on its rolls and paid by it and loaned by it to the Interior Department to do work for it?

Mr. FINNEY. No; I think there is congressional sanction or recognition of this detail of this officer from the Department of Justice. They at least recognize it by making appropriations for him each year. I have not looked the matter up.

Mr. PEPPER. If you find that, will you produce it for my enlightenment?

Mr. FINNEY. Yes, sir; I haven't looked it up.

Mr. PEPPER. All I want to do is to get this thing clearly before the committee. It has been discussed in a haphazard way, but I want to get it clear. I understand that there are two classes of people doing forestry work in the Indian Service under that cooperative agreement. As to one of them, that class whose salaries were paid by the Forestry Service and made the subject of reimbursement, you agree that no fiscal question arose?

Mr. FINNEY. None arose.

Mr. PEPPER. And in respect to the other class of people, namely, those that were put upon the rolls of the Indian Office in the first instance and paid out of its appropriation?

Mr. FINNEY. Under this appropriation of March 3, 1909?

Mr. PEPPER. Yes; under this appropriation of March 3, 1909. And the only question as to them was the question whether it was proper that persons so paid should work under the direction of the Forestry Service?

Mr. FINNEY. Yes, sir; the question whether we had the right to appoint them, put them upon the rolls, and pay them under that particular provision in the cooperative agreement.

Mr. PEPPER. That is right, and that question was never specifically submitted to the comptroller.

Mr. FINNEY. Not to my knowledge.

Mr. PEPPER. And that decision of September 3, 1908, rendered by the comptroller, whatever may be its significance, had, of course, no relation to the state of things brought about by the act of March 3, 1909?

Mr. FINNEY. No, sir; necessarily it could not have had.

Mr. PEPPER. Certainly not; I think we understand each other on that point. May I ask you further—

Mr. FINNEY. Of course it had no relation to the act of 1909; it could not be a construction of an act which had not been passed. Of course I do not mean it may be that principles were not announced there that might have some bearing.

Mr. PEPPER. I understand your contention in regard to that.

Mr. MADISON. Just a moment. As I understand you, these men were to be appointed by the Interior Department; is that right?

Mr. FINNEY. Yes, sir.

Mr. MADISON. To be appointed by the Interior Department?

Mr. FINNEY. Yes, sir.

Mr. MADISON. And carried on the rolls of the Interior Department?

Mr. FINNEY. Yes.

Mr. MADISON. But to—

Mr. FINNEY. To be paid from the appropriation.

Mr. MADISON. To be paid from the appropriation of the Interior Department, of course. But to act under the direction and control of the Forestry Bureau?

Mr. FINNEY. That would have been the effect of handling them under this cooperative agreement; yes, sir.

Mr. MADISON. But it was not a case, then, of the Forestry Bureau loaning its employees to do work for the Interior Department?

Mr. FINNEY. Not in this instance; no.

Mr. MADISON. Not at all?

Mr. FINNEY. We were dealing with the appointment of a force of men in the Indian Office of the Interior Department, to be on its rolls, paid from this appropriation, but the suggestion of Mr. Valentine, the commissioner, was to handle them under this cooperative agreement of January 22, 1908, one clause of which—

Mr. GRAHAM. The cooperative agreement, if I caught it right, was an agreement whereby the Forester furnished employees to the Indian Service for the purpose of doing certain work?

Mr. FINNEY. Yes.

Mr. GRAHAM. That was the cooperative agreement?

Mr. FINNEY. That was the condition of affairs at the time the cooperative agreement was approved, because there was no specific appropriation to the Indian Office by the Interior Department for this forestry work except on the Menominee Reservation.

Mr. GRAHAM. Does the cooperative agreement—I do not remember of having read it—does the cooperative agreement in effect provide that employees in the Bureau of Forestry shall do certain work in the Indian Service in connection with the Forest Service, and the Forest Service in the first instance pay those men their salaries and be reimbursed later from the Indian appropriation? Is that what the cooperative agreement in effect stipulates?

Mr. FINNEY. Well—

Mr. PEPPER. Will Judge Madison permit me to refer him to the agreement itself? It is on page 1200 of the testimony. It is very short, sir. Your question relates to a single paragraph in it. I think if you would look at it it would best answer your inquiry.

Mr. MADISON. What page?

Mr. PEPPER. It is on page 1200 of the testimony, and the second paragraph under the heading "Conditions" is the only thing, Mr. Finney, that deals with it.

Mr. FINNEY. That is what I had in mind.

Mr. MADISON. Those three paragraphs?

Mr. PEPPER. The three paragraphs only, and I am referring to the first and second.

Mr. PEPPER. And if I rightly understand the situation, the whole matter that has caused so much discussion and confusion boils down to this—as to whether it was proper under this agreement, not not merely to have trained foresters carried on the rolls of the Forest Service doing work on Indian reservations under direction of the forester, their salaries paid by the Forest Service and reimbursed to the forester out of the Indian appropriation, but also trained foresters appointed in the first instance by the Indian Office working on Indian reservations under the direction of the forester being paid in the first instance out of the Indian appropriation, instead of its being made a subject of reimbursement. As I understand it that

is the whole question about which there has been so much discussion, and Mr. Finney will correct me if I am wrong.

Mr. FINNEY. It seems to me there is a little more in it than that. Here is an instance where we were dealing with the first general appropriation made by Congress to the Interior Department for taking care of timber on Indian reservations.

Mr. PEPPER. Surely.

Mr. FINNEY. Now, it was evidently incumbent upon the department under that appropriation to keep a force, or to get a force somewhere, to care for that timber, and Mr. Valentine proposed to appoint them on his rolls and pay them out of his appropriation, but he wanted to handle them under the cooperative agreement and to get the benefit, evidently, of Mr. Pinchot's experience and knowledge of forestry, and the position we took was that the law would not permit us to appoint the men under those conditions or to spend the appropriation under those conditions, but it would have to be controlled exclusively in our department; and we invited the Forestry Bureau to participate with us, as they have in the past, by way of advice and help, and through reimbursement in this particular instance.

Mr. PEPPER. Of course, Mr. Chairman, I did not want to precipitate a long argument on a legal question. I simply wanted to bring out the facts so we could have the issue before us when the time comes for argument. I draw your attention to those letters by Senator La Follette in May, 1909, to the Secretary of the Interior, and to the answers of the Secretary of the Interior. I think page 1180 of volume 2 shows the letters.

Mr. FINNEY. 1180.

Mr. PEPPER. 1180 is the first one. Senator La Follette's letter to the Secretary of the Interior of May 11, 1909, Mr. Finney.

Mr. FINNEY. Yes, sir.

Mr. PEPPER. That letter of the Senator's is a serious inquiry respecting what the writer understood to be the reversal of an important policy, is it not? That is, the reversal by the Secretary of the Interior of the policy of his predecessor?

Mr. FINNEY. It was an inquiry of Senator La Follette's as to the withdrawals and restorations. I do not know whether it involved a question of policy or not.

Mr. PEPPER. You do not care to characterize it as that exactly, but don't you think you do the Secretary of the Interior an injustice when you intimate or imply that he did not give personal consideration to the answer that was sent to the Senator's inquiry?

Mr. FINNEY. I think not. Secretary Ballinger knows that I try to get accurate information before I prepare these letters, and I think he has a good deal of confidence in me. It may not be well founded—

Mr. PEPPER. Do not understand me to question that for a moment. I simply want to know now, as a matter of fact, what you did do when the Secretary received from the Senator what seems to me to be a serious inquiry, calling for the careful consideration of the Secretary of the Interior. What did you do in order to get the information for making your answer?

Mr. FINNEY. The Secretary turned the letter over to me, and I think, in this instance, with the verbal direction to get up a reply to Senator La Follette; to get him the information.

Mr. PEPPER. Yes.

Mr. FINNEY. That is my recollection. Of course I knew the information as to what first-form withdrawals had been made should be secured from the Reclamation Service, and I either telephoned or wrote a note to the Reclamation Office and asked him to get that information—make up a table. As to the restorations, I found the file in our Mails and Files Division of restorations that had been made on the recommendation of Acting Director Davis and the approval of Secretary Ballinger. I got that to my desk, and he said, "Was the reclamation matter withdrawal in the Deschutes fully restored?" I found that had not been restored.

Mr. PEPPER. Yes.

Mr. FINNEY. And as to the form of words used in approving the railroad rights of way in the Deschutes River Valley, I went to the General Land Office and examined the records in the railroad division.

Mr. PEPPER. Could you tell us, Mr. Finney, directing your attention to the paragraph at the top of page 1181, where you got the information that the Director of the Reclamation Service had advised that his bureau was not in possession of funds with which to make necessary investigations?

Mr. FINNEY. That must have been information that I secured either from Secretary Ballinger or from Director Smith at the time when I was called into the room to help prepare the form of re-withdrawals, about April 23 or 24. I was surprised to find, as I said yesterday, that re-withdrawals were being made, and probably Director Smith or the Secretary told me that the Reclamation Service was not in funds for this class of work. Of course, I knew myself, or at least it was my opinion, that they had no funds that they could lawfully expend for work which did not bear on the reclamation of arid land.

Mr. PEPPER. I was not referring particularly to the ultimate question whether they could use other funds, but to where you got the information that the Director of the Reclamation Service had advised, etc.

Mr. FINNEY. Well, I am not positive as to that—as to where I got it.

Mr. PEPPER. Don't you think that the very natural thing really did happen, Mr. Finney, and that is, when Mr. Ballinger turned over to you the letter of inquiry from Senator La Follette, he and you had some conversation, in the light of which you drafted the answer?

Mr. FINNEY. No; I am quite sure about that, Mr. Pepper.

Mr. PEPPER. Suppose you turn to the next letter that you drafted, namely, that of May 25. Where did you get the information at the top of the second paragraph of the letter on page 1182, where you say [reading]

I have to advise you that the withdrawal of the lands in Utah was not revoked, because it was found to be approximately accurate upon investigation of the matter by the Geological Survey.

Mr. FINNEY. I got that information from the survey. I had been up to their building investigating the subject of re-withdrawals and the data on which they based it, and mentioned the Green River, the Utah matter, to them—

Mr. PEPPER. That includes the second one, the White River, Utah, does it not?

Mr. FINNEY. White River; yes, sir.

Mr. PEPPER. Well, in point of fact, is it not a fact the case of the withdrawal which was picked out by the Geological Survey as being typical of an inaccurate withdrawal missed the stream at several places?

Mr. FINNEY. They prepared a map showing that the stream had been missed at one place, I think.

Mr. PEPPER. Is not that the particular case which appears in Senate document at page 86?

Mr. FINNEY. That is one of them.

Mr. PEPPER. Is not that, so far as Utah is concerned, the case that is selected as typical of an inaccurate withdrawal?

Mr. FINNEY. That is one of the cases; yes, sir. One of the two.

Mr. PEPPER. And isn't it true that if you look at the map opposite page 86 of Senate Document 248 that it is there stated in the legend at the top of the map that the reason that no restoration was made there was because the Director of the Reclamation Service did not so recommend? If you have any doubt about that—

Mr. FINNEY. Let me please look at the map. There is no map in this document.

Senator PURCELL. Here is one.

Mr. PEPPER. Could I borrow it? I direct your attention to the map opposite page 86 in the Senate document and to the legend "Not restored since the Director of the Reclamation Service did not so recommend."

Mr. FINNEY. I do not know who wrote that legend. I did not.

Mr. PEPPER. That appears to be an exhibit of Mr. George Otis Smith's letter or report to Secretary Ballinger.

Mr. FINNEY. Yes.

Mr. PEPPER. So to work upon the assumption for the moment—we will find out hereafter whether it is an exact assumption or not—working for the moment upon the assumption that the legend is the statement of the Geological Survey, is it still your recollection that the Geological Survey people told you when you were preparing your letter to Senator La Follette that the reason why that withdrawal had not been restored was because it had been found to be approximately accurate upon investigation?

Mr. FINNEY. That is my recollection. I had considerable talk with Mr. Beech and others in the Geological Survey on the subject of these restorations and rewithdrawals, and I was familiar with the fact that there had been withdrawals in the four States by Secretary Garfield.

Mr. PEPPER. Yes.

Mr. FINNEY. And that there had been restorations in three of those States, and I mentioned the Utah proposition to him, and as I recall they told me that they had some data in their office which showed that the White River in Utah did have power possibilities, and that they had not suggested any restoration. I don't know why the Director of the Reclamation Service had not.

Mr. PEPPER. Will you turn to the last paragraph of that letter of May 25, as it appears on page 1183, and tell me where you got the information that led you to say as follows:

In brief, the former withdrawals were made largely upon insufficient information and withheld from entry large areas of public lands of no possible value for power sites, while the withdrawals now being made are based upon information derived from actual, accurate field examination, and are confined to the actual tracts having a possible value for power sites.

Where did you get that?

Mr. FINNEY. I got it from the Geological Survey. The statement that they had made field examination along these various streams, topographical surveys, and in certain instances stream gauging, and that they were making these withdrawals upon the data indicated during those operations.

Now, as to the first statement about their being made largely upon insufficient information, and that they were areas of no possible value for power. That was a statement which I presume I am responsible for. It was based largely upon the withdrawals, the extent of the withdrawals; I knew that many of them were too far from the streams to include power sites. I knew they must include agricultural land. In fact I have been across some of those. I have been across the Green River withdrawals on the train.

Mr. PEPPER. In view of the importance of the subject, did you feel that your information in regard to it was sufficient to justify you in putting the Secretary of the Interior in the position subscribed by him?

Mr. FINNEY. I think it was; yes. I thought I was very careful in gathering information.

Mr. PEPPER. As respects those matters which you did not get information of from the government department and resulting from your own general knowledge of conditions in the West?

Mr. FINNEY. Yes; and from the records in the office. You will remember I made up the list of withdrawals for the Secretary at his request.

Mr. PEPPER. I am simply speaking now of your knowledge of field conditions.

Mr. FINNEY. Oh, yes. My actual knowledge of field conditions was rather limited on that.

Mr. PEPPER. And you had no knowledge at this time whether lands withdrawn were lands which really withheld from entry property desirable for homestead or other appropriations? You had no knowledge, and you gained none on that subject, did you—you just assumed it?

Mr. FINNEY. Except in the case of the Green River, I had no actual field knowledge, but I assumed it from the maps and from the records.

Mr. PEPPER. Yes—that it must be so.

Mr. FINNEY. And there had been a number of papers filed by settlers and some by Members of Congress complaining of the withdrawals. I think one or two petitions were filed by settlers alleging that it withheld lands for settlement.

Mr. PEPPER. Of course you would take as verity statements made by Members of Congress; but would you do that from settlers and make it the basis of a serious statement—

Mr. GRAHAM. Did you dispose of your question and all the elements in it?

Mr. FINNEY. If I was basing my statement wholly upon the petitions, I would say that the statement was made in a petition, but I based it on a number of circumstances.

Mr. PEPPER. Mr. Finney, you do not want the committee to infer, do you, that Mr. Ballinger did not have abundant opportunity to examine these letters before he sent them?

Mr. FINNEY. To Senator La Follette?

Mr. PEPPER. Yes.

Mr. FINNEY. Why, he might have read them. They were sent to him for signature, and he did sign them.

Mr. PEPPER. If he regarded the inquiries as serious inquiries respecting an important government policy, his natural course would be to read and consider them, would it not?

Mr. FINNEY. Mr. Pepper, I did not understand that this was any great question. I did not know it was going to be involved in any controversy of any kind. I thought Senator La Follette was an honest seeker after information, and in good faith prepared these letters, and tried to give him the information he sought. I did not call Secretary Ballinger's special attention to them. I wrote them and put my initials on the corner and sent them to his room. Whether he did read them or not, I can not say.

Mr. PEPPER. I understand, however, the situation to have been that the letters from Senator La Follette were first called to your attention by the Secretary?

Mr. FINNEY. This first letter was.

Mr. PEPPER. So that whatever you may have understood about the subject, there was nothing in the transaction which led you to think that the Secretary did not fully understand it, and deal with it as he thought proper?

Mr. FINNEY. Well, I do not know. He may have noticed them as he went through, and he may not.

Mr. MADISON. Now, for the purpose of information, to get at the facts, let me ask you this question: Had not you previously talked over kindred subjects—the same subjects—with the Secretary?

Mr. FINNEY. I furnished the Secretary, at his request, soon after he came in, a list of the withdrawals, of various withdrawals, among them being water-power withdrawals, and we talked about the question of making them. I did not know of the restoration until I got to looking up the files in connection with this letter of Senator La Follette. That is, I knew nothing of the letter that had been signed by Mr. Davis and approved by Mr. Ballinger. Of course, I probably had a general knowledge that there had been some restorations.

Mr. GRAHAM. Now, as I understand you, you had been in the General Land Office?

Mr. FINNEY. I had.

Mr. GRAHAM. And you were brought over by Mr. Ballinger, who had been your former chief, to act as a kind of general assistant to him. That is true, is it not?

Mr. FINNEY. I was transferred from the General Land Office, Mr. Pierce says, on his recommendation.

Mr. GRAHAM. Yes; but as a kind of general assistant to Mr. Ballinger?

Mr. FINNEY. And to Mr. Pierce; both.

Mr. GRAHAM. But to Mr. Ballinger, also. Now, I am not trying to cross-examine you at all. Do not take me that way.

Mr. FINNEY. The statutory title of the position is Assistant Secretary of the Interior, but as a matter of fact I am called on by the First Assistant Secretary quite as frequently as by the Secretary. I should say.

Mr. GRAHAM. As a matter of fact the duties of the First Assistant are very important?

Mr. FINNEY. Yes, sir; a part of the work is specifically assigned to him.

Mr. GRAHAM. And they have need of men like yourself who have been in the department for a long time, and who understand a great many of the details?

Mr. FINNEY. Yes, sir.

Mr. GRAHAM. Now, then, you went over there to work in connection with Mr. Ballinger, really at his right hand in a way. Now, we all understand that there was a difference as to policy. It has been announced here—a difference as to policy in the matter of withdrawals of public lands between this present administration of the office of the Secretary of the Interior and the previous one. You have given voice to it here, if I understand you correctly, when you stated yesterday that as a matter of fact Mr. Ballinger felt that all withdrawals under the general supervisory power were illegal. That is true, isn't it?

Mr. FINNEY. I think he doubted their illegality. I think that is so stated.

Mr. PEPPER. Doubted their legality, you mean?

Mr. FINNEY. Yes, sir; doubted their legality.

Mr. MADISON. Yes; and, of course, the man who has taken the responsible post of a department officer, when he doubts the legality of a thing it is reasonable to conclude that he would attempt to avoid doing any more than is possible of those things which he believes to be illegal. That follows, I think, as a necessary sequence. Now, then, I want to know if as a matter of fact, with regard to these La Follette letters, taking into consideration Secretary Ballinger's feelings about the question of withdrawals, and so forth, if, as to the La Follette letters, you had not, while not particularly with reference to the La Follette letters specifically, yet in a general way as to those general lines which were involved in the La Follette letters—whether or not you had talked them over with him, and understood that in writing the La Follette letters you were, in fact, giving voice to Mr. Ballinger's feelings, and sentiments, with regard to those things.

Mr. FINNEY. Well, that is rather hard to answer. Mr. Ballinger did not tell me what to put in the letters.

Mr. MADISON. Oh, no; I do not say that or intimate that.

Mr. FINNEY. And the first letter, as I say, my recollection is that he turned that over to me from his desk, and that after looking it over I mentioned the vast amount of work involved therein in looking up the table of those reclamation withdrawals. It involved an immense amount of work.

Mr. MADISON. All I am asking for is the facts.

Mr. FINNEY. I am giving you the conversation I had with him.

Mr. MADISON. You can answer my question: "No," that you had not had such conversation with him.

Mr. FINNEY. I will answer that question, "No."

Mr. VERTREES. Mr. Madison, I would suggest that you let him answer the question, please.

Mr. MADISON. I will, certainly, as a courtesy to you both. I thought he really wanted to answer me in the negative, but if you want to explain I will gladly listen to you.

Mr. FINNEY. I would have to say, "No."

Mr. MADISON. I want to be fair. You go ahead and explain it.

Mr. FINNEY. He did not direct me as to the language to be used or as to the form, or as to how the letter should be written. When he turned the first one over to me, the letter of May 11, I did ask him as to whether I should go to the work of getting up that table of the reclamation withdrawals. It involved a big lot of work, and he said we should get the information. I suppose because he was a United States Senator; I do not know. I did not know that Senator La Follette had had any special influence.

Mr. MADISON. If it had been a Member of the House from Kansas you would not have gotten it?

Mr. FINNEY. I would have gotten the information without any question at all if it had been a Member of the House from Kansas.

Mr. MADISON. That is probably because you yourself come from Kansas?

Mr. FINNEY. That is true.

Mr. MADISON. Go on, if you have any further statement you want to make about it.

Mr. FINNEY. Of course, I prepared letters to the best of my ability, as I thought Secretary Ballinger would answer the letters upon the facts and upon the records in the department. He did not tell me how to write the letter, or what to put in it, and it was sent into him in the usual way by messenger, and whether he read them before signing them I can not state; I do not know. I know that they were signed, because I had occasion afterwards to refer to the files and found press copies in the files.

Mr. PEPPER. Why did you not, in answer to the Senator's inquiry, state what I understand the real fact was; that the restoration had been made because Mr. Ballinger thought the withdrawals had been illegal?

Mr. FINNEY. I do not know anything about that.

Mr. PEPPER. You don't know anything about what?

Mr. FINNEY. The direction that there had been—that there had been any direction, as claimed, to the Reclamation Service, to restore the land.

Mr. PEPPER. You did understand, did you not, that Mr. Ballinger thought that those withdrawals were illegal because had he not so stated to you?

Mr. FINNEY. I guess I did not catch your question.

Mr. PEPPER. I want to know why you did not state it as a fact to Senator La Follette that the real reason why the restorations had been made was because the withdrawals were deemed by Mr. Ballinger to be illegal.

Mr. FINNEY. I will tell you exactly, Mr. Pepper. After the restorations had been made and before those letters were written to Senator La Follette, the Secretary had determined to make those re-withdrawals. After some sort of a conference with the President and Cabinet they determined on the policy of making temporary withdrawals. That was a question that I did not raise—the question of legality.

Mr. PEPPER. So the letter was framed to establish a harmony or correspondence between the reasons given in the letter and the then prevailing policy of the department. Is that correct?

Mr. FINNEY. No, sir.

Mr. PEPPER. It comes pretty close to it, does it not?

Mr. FINNEY. I did not discuss the illegality of the withdrawals, as viewed them, but I can not say that I framed up the letter.

Mr. PEPPER. I do not mean that you framed it up. I mean you thought the proper thing to do under the circumstances was to write a letter which was consistent with the policy at the time that the Secretary was pursuing.

Mr. FINNEY. Yes, sir; after the Secretary had determined to make the rewithdrawals I did not think it was proper for me to again raise the question of illegality or legality of the withdrawals.

Mr. PEPPER. Although you were answering questions as to why such steps had in fact been taken in the past?

Mr. FINNEY. Yes, sir.

Senator PURCELL. How much longer do you desire to examine the witness to-day?

Mr. PEPPER. I think I can finish in five or ten minutes.

Senator PURCELL. Do you want to examine further, Mr. Vertrees?

Mr. VERTREES. Yes, sir.

Senator PURCELL. Then I move that the committee adjourn.

The ACTING CHAIRMAN. The record will show at this point the following calls for the production of papers:

WASHINGTON, D. C., April 16, 1910.

SEN. KNUTE NELSON,
Chairman Joint Investigating Committee.

DEAR SIR: In view of the facts which I called to the attention of the committee yesterday (testimony, pp. 2969-2974), in connection with the letter of Christensen to Schwartz, February 8, 1910 (testimony, p. 2814), showing that the Secretary of the Interior had failed to produce to the committee papers called for which now appear to have been in the General Land Office available for production since the middle of February, I respectfully request that the Secretary of the Interior be requested to carefully review all calls for papers heretofore made by the committee at our request, and produce as soon as may be all papers heretofore called for and not already produced.

Yours, truly,

LOUIS D. BRANDEIS.

WASHINGTON, D. C., April 16, 1910.

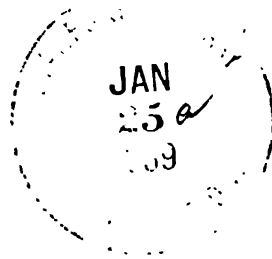
SEN. KNUTE NELSON,
Chairman Joint Committee of Congress, Washington, D. C.

DEAR SIR: We beg leave to ask that the Secretary of the Interior be directed to produce the following papers:

All correspondence on the files of the Department of the Interior, or the Secretary's private files, or the files of the Geological Survey, relative to the withdrawals of oil lands referred to in the statement of the Geological Survey found on page 1546 of the printed record of these hearings.

GEO. PEPPER,
NATHAN A. SMYTH,
Counsel for Gifford Pinchot.

(The motion to adjourn was thereupon agreed to, and at 5 o'clock and 5 minutes p. m. the committee adjourned until Friday, April 22, 1910, at 10 o'clock a. m.)



NO. 31

**HEARINGS BEFORE THE COMMITTEE TO INVESTIGATE THE
INTERIOR DEPARTMENT AND FORESTRY SERVICE**

APRIL 22, 1910

**ROOM 207, SENATE OFFICE BUILDING
WASHINGTON, D. C.**

MEMBERS OF THE JOINT COMMITTEE.

KNUTE NELSON, Minnesota, Chairman.

SAMUEL W. McCALL, Massachusetts, Vice-Chairman.

FRANK P. FLINT, California.

GEORGE SUTHERLAND, Utah.

ELIHU ROOT, New York.

WILLIAM E. PURCELL, North Dakota.

DUNCAN U. FLETCHER, Florida.

MARLIN E. OLMSTED, Pennsylvania.

EDWIN DENBY, Michigan.

E. H. MADISON, Kansas.

OLLIE M. JAMES, Kentucky.

JAMES M. GRAHAM, Illinois.

PAUL SLEMAN, *Secretary*.

Mr. FINNEY. I did not discuss the illegality of the withdrawals, as I viewed them, but I can not say that I framed up the letter.

Mr. PEPPER. I do not mean that you framed it up. I mean you thought the proper thing to do under the circumstances was to write a letter which was consistent with the policy at the time that the Secretary was pursuing.

Mr. FINNEY. Yes, sir; after the Secretary had determined to make the rewithdrawals I did not think it was proper for me to again raise the question of illegality or legality of the withdrawals.

Mr. PEPPER. Although you were answering questions as to why such steps had in fact been taken in the past?

Mr. FINNEY. Yes, sir.

Senator PURCELL. How much longer do you desire to examine the witness to-day?

Mr. PEPPER. I think I can finish in five or ten minutes.

Senator PURCELL. Do you want to examine further, Mr. Vertrees?

Mr. VERTREES. Yes, sir.

Senator PURCELL. Then I move that the committee adjourn.

The ACTING CHAIRMAN. The record will show at this point the following calls for the production of papers:

WASHINGTON, D. C., April 16, 1910.

Hon. KNUTE NELSON,
Chairman Joint Investigating Committee.

DEAR SIR: In view of the facts which I called to the attention of the committee yesterday (testimony, pp. 2969-2974), in connection with the letter of Christensen to Schwartz, February 8, 1910 (testimony, p. 2814), showing that the Secretary of the Interior had failed to produce to the committee papers called for which now appear to have been in the General Land Office available for production since the middle of February, I respectfully request that the Secretary of the Interior be requested to carefully review all calls for papers heretofore made by the committee at our request, and produce as soon as may be all papers heretofore called for and not already produced.

Yours, truly,

LOUIS D. BRANDEIS.

WASHINGTON, D. C., April 16, 1910.

Hon. KNUTE NELSON,
Chairman Joint Committee of Congress, Washington, D. C.

DEAR SIR: We beg leave to ask that the Secretary of the Interior be directed to produce the following papers:

All correspondence on the files of the Department of the Interior, or the Secretary's private files, or the files of the Geological Survey, relative to the withdrawals of oil lands referred to in the statement of the Geological Survey found on page 1546 of the printed record of these hearings.

GEO. PEPPER,
NATHAN A. SMYTH,
Counsel for Gifford Pinchot.

(The motion to adjourn was thereupon agreed to, and at 5 o'clock and 5 minutes p. m. the committee adjourned until Friday, April 22, 1910, at 10 o'clock a. m.)

FRIDAY, APRIL 22, 1910.

JOINT COMMITTEE TO INVESTIGATE THE
INTERIOR DEPARTMENT AND FORESTRY SERVICE,
Washington, D. C., April 22, 1910.

The Joint Committee to Investigate the Interior Department and Forestry Service met pursuant to adjournment at 10 a. m.

There were present as counsel: Mr. Louis D. Brandeis, representing Mr. Louis R. Glavis; Mr. George Wharton Pepper and Mr. Nathan A. Smyth, representing Mr. Gifford Pinchot; Mr. John J. Vertrees and Carl Rasch, representing Secretary Ballinger.

The CHAIRMAN. The committee will please come to order. A quorum is present. The hearing will proceed.

Mr. PEPPER. I have not quite finished with Mr. Finney.

Mr. VERTREES. Mr. Chairman, I have some corrections to be made in the testimony of Mr. Christensen which were made by Mr. Christensen himself. I have submitted them to Mr. Brandeis, and as there is no objection, I wish to offer them to be placed in the record.

The CHAIRMAN. Very well, the corrections will be made.

(The list of corrections is as follows)

MEMORANDUM.

The following corrections should be made in the testimony of Christensen:

- Page 2671: Line 11 from bottom, "16" should be changed to "17."
- Page 2672: Line 13 from top, "city" should be changed to "office."
- Page 2672: Line 13 from bottom, "he" should be changed to "they."
- Page 2674: Line 17 from top, "Hudson" should be changed to "Hutson."
- Page 2678: Line 10 from bottom, answer should be changed to read: "He got the original. They have offered in evidence a copy of that letter from me, and which was placed with the copies of the receipt."
- Page 2683: Line 19 from top, "but" should be changed to "to."
- Page 2683: Line 12 from bottom, "No" should be changed to "Yes."
- Page 2684: Line 4 from top, "any" should be changed to "important."
- Page 2688: Line 21 from top, "wrote" should be changed to "received."
- Page 2689: Line 19 from bottom, "pages" should be changed to "cases."
- Page 2693: Line 17 from top, "Spaulding" should be "Schwinnen."
- Page 2695: Line 24 from top, "No" should be changed to "Yes."
- Page 2706: Line 32 from top, "12" should be changed to "4."
- Page 2716: Line 24 from bottom, "other" should be changed to "original."
- Page 2756: Line 15 from top, "Stoner" should be changed to "Spaulding."
- Page 2757: Line 5 from top, initial "F" should be changed to "S."
- Page 2820: Line 9 from top, "Cox" should be "Colliers," and "of the" should be "or."

Mr. VERTREES. A call was also made for the original letter of February 2, 1910, written by Miss Shartell to Mr. Christensen. I now present that and ask that it be put in the record. I have also submitted that to Mr. Brandeis.

The CHAIRMAN. That will be admitted.

(The letter is as follows:)

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Seattle, Wash., February 2, 1910.

Mr. A. CHRISTENSEN,
Chief of Field Division, Portland, Oreg.

SIR: Referring to our conversation over the telephone this morning in reference to the records of Special Agent Bowman, which were supposed to have been left in this office, I wish to say that Mr. Parks and myself went through every desk, cabinet.

etc., carefully, in the office, and Mr. Parks and the custodian searched through all the boxes which are stored in this building belonging to this office, but no trace of them could be found. I think it must be that the records were in that box which was under the table and which were later taken out and destroyed. The custodian states that he received notice to have the box removed by the janitor and he so notified the janitor.

Very respectfully,

ELLA M. SHARTELL.

STATEMENT OF EDWARD C. FINNEY—Resumed.

Mr. VERTREES. Mr. Finney, will you please take the stand.

Mr. PEPPER. Mr. Chairman, at the last meeting I asked Mr. Finney certain questions respecting the office of the Assistant Attorney-General for the Interior Department. Mr. Finney said he would look into the matter and make a memorandum of the result of his investigation. The paper which I have in my hand is the memorandum you have prepared, is it not, Mr. Finney?

Mr. FINNEY. Yes, sir.

Mr. PEPPER. Mr. Chairman, I suggest that it simply be put into the record as an additional statement of Mr. Finney on that point on which I interrogated him, if that is agreeable to Mr. Vertrees.

The CHAIRMAN. Is there any objection?

Mr. VERTREES. None at all. What is the general nature of it?

Mr. PEPPER. The general nature of it is a statement of the statute under which that particular assistant attorney-general was appointed, and the provisions of the appropriation acts which make appropriations for the pay of the clerks and other assistants in the Department of the Interior who are under his supervision. Is that correct, Mr. Finney?

Mr. FINNEY. Yes, sir.

The CHAIRMAN. That statement will be printed in the record.

(The statement is as follows:)

The office of the Assistant Attorney-General for the Department of the Interior was created by the act of February 25, 1871 (16 Stats., 432), as follows:

"That there shall be in the Department of Justice an additional assistant of the Attorney-General, who shall be appointed by the President, by and with the advice and consent of the Senate, and shall hold his office until a successor shall be duly qualified, and who shall be paid the salary of other assistants of the Attorney-General."

While this act did not on its face provide that the additional Assistant Attorney-General therein provided for should be assigned to the Department of the Interior, it is clear from the statement of Senator Stewart, chairman of the committee that reported the bill to the Senate, that such was the intention of Congress. On page 1463 of volume 168 of the Congressional Globe, Forty-first Congress, third session, Senator Stewart, in explaining the bill to the Senate, said:

"This officer is for the Interior Department. The report of the Secretary shows the necessity for it."

While the annual appropriations for the payment of the officer's salary are made to him as one of a number of assistants to the Attorney-General, Congress in each appropriation act has recognized the fact that he is an officer authorized to be in the Department of the Interior by providing specifically under the head of Department of the Interior for the salaries of attorneys and clerks in the "Office of Assistant Attorney-General." (See 35 Stats., 224 and 888; 34 Stats., 974, etc.)

The following appears in the register of the Department of Justice for the year 1909, page 18:

"The Assistant Attorneys-General and the solicitors for the several executive departments, under the provisions of section 349-350, Revised Statutes, exercise their functions under the supervision and control of the Attorney-General. They are the Assistant Attorney-General for the Department of the Interior, the Solicitor for the Department of State, the Solicitor of the Treasury, the Solicitor of Internal Revenue, and the Solicitor of the Department of Commerce and Labor.

"ASSISTANT ATTORNEY-GENERAL FOR THE INTERIOR DEPARTMENT.

"This Assistant Attorney-General is the chief law officer of that department. When requested, he advises the Secretary and Assistant Secretaries upon questions of law arising in the administration of the department. All appeals from the General Land Office are sent to his office for consideration."

Mr. PEPPER. Mr. Finney, there are one or two questions I want to ask about these reclamation certificates about which you testified in chief. On page 3062 of the testimony you gave some answers to Mr. Vertrees from which it might be inferred that you meant the committee to understand that the system of reclamation certificates had originated in the desire of the Reclamation Service to undertake work when there were not available funds for such work. I direct your attention to the lower half of the page I have mentioned. Is that, in fact, what you intended the committee to understand?

Mr. FINNEY. My understanding is that there were not at this time unallotted funds in the reclamation fund which were available for carrying on the Grand Valley project.

Mr. PEPPER. You are now referring to what date, approximately?

Mr. FINNEY. In the early part of 1909, and also, I take it, in 1908, when the matter was tentatively approved. Now, there had been a small allotment made, as I understand it, for preliminary survey work on that project, but it was not sufficient to begin construction work according to my understanding.

Mr. PEPPER. So that you do wish the committee to understand that you assigned as one of the reasons for resorting to this cooperative-certificate device a lack of available funds in the reclamation fund?

Mr. FINNEY. Yes, sir; and the basis for that statement of mine in the letter to the Attorney-General was the statement of Mr. Davis, Acting Director of the Reclamation Service, in his letter of May 5, 1909.

Mr. PEPPER. And that is the letter that appears printed on page 3063?

Mr. FINNEY. Page 3063; yes, sir; and also a letter of Director Newell, written in 1908, not concerning this project, but with reference to the general condition of the fund.

Mr. PEPPER. Did you understand that letter of Mr. Davis to relate to the condition of the fund in May, 1909, or to the condition of the fund at the date of the inauguration of the certificate system at a prior time?

Mr. FINNEY. I understand the letter of Mr. Davis, of course, to relate to the conditions existing at the time he wrote this letter of May 5, 1909.

Mr. PEPPER. What was the basis of the statement made by you on the page to which I first called your attention, that the initiation or the origination of this certificate system was due to a lack of available funds? If that is not what you meant by your answer, I would like to have the correction made.

Mr. FINNEY. I think my testimony on page 3062 all had reference to the Grand Valley project.

Mr. PEPPER. That is what I wanted to find out. The answer that you gave to Mr. Vertrees's question suggests that you believe that the shortage of funds at the disposal of the Reclamation Service

was the reason, or one of the reasons, for the initiation of the certificate system. I want to know—

Mr. FINNEY. I do believe that.

Mr. PEPPER. Now, what is the basis of your belief? Just point to the evidence in or out of the record upon which you rely in support of your statement.

Mr. FINNEY. Well, I am more or less, and have been more or less, familiar with the operation of the reclamation act ever since it began.

Mr. PEPPER. More or less?

Mr. FINNEY. Well, depending on the time, more at some times.

Mr. PEPPER. Directing your attention to the time when the certificate system was inaugurated, was your greater or lesser familiarity at that time such as to enable you to say now whether or not there were then funds available for the projects?

Mr. FINNEY. Well, I could not refer you to the evidence on that point; I have an opinion, but it would only be an opinion.

Mr. PEPPER. But, so far as the facts are concerned, you have not now any facts in your mind, and you had not any facts in your mind when you made that statement on page 3062?

Mr. FINNEY. In my statement on page 3062 I had reference to the Grand Valley project and the conditions existing in 1908 and 1909, when that project was under consideration.

Mr. PEPPER. And you wanted your answer limited to that?

Mr. FINNEY. My answer on page 3062 is limited to that; yes, sir.

Mr. PEPPER. Now, the basis for that statement, as I understand it, is found in the letter of Mr. Davis of May 5, 1909.

Mr. FINNEY. And the letter of Mr. Newell, written in 1908.

Mr. PEPPER. Will you turn to the letter of Mr. Davis on page 3063 and indicate the place or places in that letter which seem to you to show that certificates had been issued, or were about to be issued, beyond the limit of the available funds?

Mr. FINNEY. The seventh paragraph of the letter states:

From every point of view the project is a very feasible and desirable one to carry out under the provisions of the reclamation act. The one tangible objection to undertaking it is a very strong one, namely, the lack of funds. The number and magnitude of the projects already taken up will absorb the available funds for some time to come.

Mr. PEPPER. Yes. He was dealing, was he not, with the request of certain persons to undertake work additional to that which had been already initiated?

Mr. FINNEY. He was dealing with the proposed Grand Valley project, which was, you may say, a comparatively new project.

Mr. PEPPER. And he says that he can not enter upon it because at that time the funds at the disposal of the Reclamation Service have been, or will be, absorbed with existing work, does he not?

Mr. FINNEY. Well, he does not say it can not be entered upon, but recommends in the last paragraph of his letter that work be resumed; but, of course, Mr. Davis had in mind on May 5, 1909, the idea of carrying on this project in part with the donations of the landowners in money and work under the cooperative plan.

Mr. PEPPER. Whence do you derive your information as to what he had in mind, in view of the circumstances that nothing of that sort is stated or suggested by the letter?

Mr. FINNEY. I assume before a man like Mr. Davis would write a report to the Secretary in connection with the undertaking of work

on a reclamation project that he would investigate the record and he would have found in that record the tentative approval given by Secretary Garfield to the recommendation of the service in 1908. It is stated exactly under what conditions it was proposed to begin the project.

Mr. PEPPER. Do you find either in that letter or elsewhere any intimation by Mr. Davis, or any intimation in the letter from Mr. Newell, that it was proposed by either or both of them to issue reclamation certificates beyond the limit of available funds?

Mr. FINNEY. That is the inference I draw from this very letter. Mr. Pepper.

Mr. PEPPER. I know it is; but I want to find out what the basis of the inference is. I can not find it, and I want you to point it out to me.

Mr. FINNEY. The original proposition of 1908, as approved by Secretary Garfield, dealt with the contribution of \$90,000 in money and, I think, \$40,000 in work, by the settlers. Now, that had to be repaid to them in some way, and the proposition was to issue these certificates which would be receivable for their water-right charges. Mr. Davis, considering that same proposition, says that this project is a very desirable one to carry out, which is true. I know it is myself. I have been on this project. He says there is only one objection, that is the lack of funds. Then he goes on and says in the next to the last paragraph of the letter that the department is committed by the contract of February 25 to allot and expend a sum equal to that raised by the local association up to the limit of \$125,000. Now, what inference can be drawn from it except that there is no fund available, and that the only way to proceed is by the issuance of these certificates?

Mr. PEPPER. Do you know, in point of fact, what the condition of the fund was at that time?

Mr. FINNEY. No; I do not say that I am able to state to you the exact condition. I have looked at the various allotments that have been made.

Mr. PEPPER. You know that certain schedules of figures have been produced by the officers of the Reclamation Service showing from time to time what the available funds under the reclamation act were?

Mr. FINNEY. I know they have produced some figures; yes, sir.

Mr. PEPPER. And you have no disposition to dispute the accuracy of those figures, have you?

Mr. FINNEY. I could not either dispute or indorse them.

Mr. PEPPER. I am not asking you about indorsing them, but suggest that if you want to dispute them now is the time to do it, and I want to know whether you propose to do it.

Mr. FINNEY. I am not prepared personally to dispute them.

Mr. PEPPER. When the submission was made to the Attorney-General and the Attorney-General gave his opinion, a subsequent suggestion was made for a resubmission to the Attorney-General, was it not?

Mr. FINNEY. Yes, sir.

Mr. PEPPER. And a subsequent opinion was given by him on September 8, three days before he gave his summary to the President in regard to the Glavis charges?

Mr. FINNEY. I think his opinion was dated September 8 or 9, I forget which.

Mr. PEPPER. Now, Mr. Finney, in answer to a question of Senator Sutherland, I think it was, you said that there were reasons given by the Attorney-General for holding these certificates invalid, which were additional to or independent of the reason that there was a shortage of available funds?

Mr. FINNEY. That is my understanding; yes, sir.

Mr. PEPPER. Have you been able to find the statement of any such reason in the opinion of the Attorney-General?

Mr. FINNEY. I have not looked at the opinion since I was here before, Mr. Pepper.

Mr. PEPPER. Will you look at page 1583, and at the bottom of the page you will find the Attorney-General referring to what he says was a misapprehension of the objection that he had made to these certificates in his prior opinion, then he goes on thus:

That objection was not that the moneys subscribed by the water users' association was not in the reclamation fund, but that the reclamation fund by the statute was created from the proceeds of the sale of government lands, there was no provision for augmenting it by private enterprise, and that the power of the Secretary of the Interior to let contracts for reclamation projects was, under the law, specifically restricted to the extent of contracting for expenditures not exceeding the amount of moneys available in the reclamation fund as constituted by law.

That is, as I understand it, the Attorney-General's own summary of his first opinion. If you have a different view will you correct me?

Mr. FINNEY. This seems to be his construction of at least a part of that opinion, but it is my understanding that his opinion involves questions other than the one subject treated in this paragraph.

Mr. PEPPER. But you are not prepared at present to point them out, is that it?

Mr. FINNEY. There are a number of objections, I think, that were raised to the proposition. It might take some little time to go all through the opinion.

Mr. PEPPER. Of course they do or do not, as you suppose, but what I principally wanted to know is whether you have in your mind now anything that you regard as an additional reason for the invalidity of the certificates?

Mr. FINNEY. I think the law itself is plain on that subject, but I understand you want the Attorney-General's view, not mine.

Mr. PEPPER. Well, I would be glad to have all the light that I can get on the subject, from whatever source.

Mr. FINNEY. The first section of the act creates a fund. It is the receipts from the sale of public lands in certain States and Territories. Those moneys are to be put in a special fund in the Treasury, and that fund in the Treasury is to be used for the examination and survey for, and the construction and maintenance of, irrigation work. Now, there is a specific appropriation by Congress of certain moneys, and they are to be used for this purpose. I fail to find anywhere in the act any other provision made by Congress for the payment for this sort of work. It seems that the payment must be made out of this fund.

Mr. PEPPER. But you are not at present able to dispute the proposition that there was at all times a sufficiency of funds, under the legislation that you have referred to, to cover the amount of certificates authorized or issued. Is that not a fact?

Mr. FINNEY. There may have been in the fund. It may have been allotted to other projects. I can not tell you as to that at the present time.

Mr. PEPPER. But you do know that there was a reserve fund of several millions?

Mr. FINNEY. I have heard it stated by Mr. Newell that there was a reserve fund; yes, sir; but to my mind that is not controlling.

Mr. PEPPER. I understand that. Now, having given your own view, can you point to any reason given by the Attorney-General additional to the one that I have referred you to, for his decision?

Mr. FINNEY. On page 1574, in his opinion of May 26, 1909, he says referring to the regulations under the cooperative plan:

These regulations go far beyond the terms of the statute. By providing for another fund and another mode of paying for irrigation work they amend the act. This contract made under them creates a joint action on the part of certain water users with the Government by which they propose to advance certain moneys and perform work in the prosecution of the project.

Then skipping a line—

By this proposed scheme the money subscribed is not in, nor does it at any time go into, the reclamation fund. There is no security that it will be in that fund or that the work agreed upon will be done, although the government officer furnishes his proportion.

Then he goes on, just below—

I might state other objections to the plan permitted by the regulations, such as the attempted exclusion of all applicants for water rights who are not members of the association; but I deem it unnecessary.

Mr. PEPPER. Now looking again at the bottom of 1583, the second opinion of the Attorney-General, have you not fallen into the same misapprehension which he there attempts to correct, where he says, "that objection was not that the moneys subscribed by the water users' association was not in the reclamation fund," etc?

Mr. FINNEY. Yes, sir; he says that was not. Well, it was not for the reclamation fund.

Mr. PEPPER. And that was not the objection which he had raised in his prior opinion; does he not say so?

Mr. FINNEY. He says so here, yes, sir; "that the reclamation fund by the statute was created from the proceeds of the sale of government lands; there was no provision for augmenting it by private enterprise," etc.

Mr. PEPPER. And the test is whether or not the certificates issued or authorized are or are not beyond the limits of the reclamation fund as constituted by law?

Mr. FINNEY. Oh, I do not understand that to be the case at all.

Mr. PEPPER. Am I not reading from his opinion in substance: "Under the law, specifically restricted to the extent of contracting for expenditures not exceeding the amount of moneys available in the reclamation fund as constituted by law." Is not that the very language, at the top of 1584?

Mr. FINNEY. That is a part of his opinion; yes, sir.

Mr. PEPPER. And does he not in the final paragraph, at the bottom of pages 1584, and top of 1585, make the whole question of validity or invalidity turn upon the availability of the fund?

Mr. FINNEY. He makes that statement in his concluding paragraph, but I would not be willing to say that he based his action entirely

upon that one proposition, Mr. Pepper, because I do not so understand his original opinion.

Mr. PEPPER. Well, I have grave doubts as to whether he based his action on that, but in so far as he states the reason for his action, is not that the only statement?

Mr. FINNEY. That is the case in this decision under review, but it is not the case in his original decision.

Mr. PEPPER. Mr. Finney, when you had received that second opinion, will you state what was done, either by you or anybody that you know of, in the way of finding out what the real condition of the reclamation fund was before applying the Attorney-General's opinion in such a way as to invalidate the certificate system?

Mr. FINNEY. We never applied the opinions so as to invalidate the certificates.

Mr. PEPPER. I said the certificate system, Mr. Finney. Your last answer simply means, does it not, that you applied to the comptroller and got from him a method of settlement of existing certificates by treating them as evidence of a quantum meruit?

Mr. FINNEY. After the second opinion steps were taken to ascertain the number and the value of the cooperative certificates outstanding. This was through an inquiry made of the Reclamation Service, and we cooperated—I say “we,” the Secretary's office and the Reclamation Bureau—in attempting to devise some scheme whereby the outstanding certificates could be retired through cash payments, and in connection with that matter we did submit to the Comptroller a letter prepared in the Reclamation Service asking for his ruling.

Mr. PEPPER. And the Comptroller simply assumes, on the basis of the statement that the certificates as such are invalidated and can not be dealt with as originally intended, and submit the scheme of redeeming them on a quantum meruit basis.

Mr. FINNEY. My recollection is that he expressly states that the Attorney-General's opinion as a legal matter is correct. That can be verified by looking at the opinion.

Mr. PEPPER. I do not find that in the opinion, but perhaps I have overlooked it. But that is immaterial. The point is that the Comptroller does, in point of fact, state a scheme for the redemption of the existing certificates on a quantum meruit basis—

Mr. FINNEY. Yes, sir.

Mr. PEPPER. And that scheme was carried into effect, was it not?

Mr. FINNEY. It is my understanding that it has been; yes, sir.

Mr. PEPPER. And in point of fact that opinion of the Attorney-General was the end of the reclamation cooperative certificate system, was it not?

Mr. FINNEY. Yes, sir; I do not think that any more have been issued. They certainly have been instructed not to issue any more.

Mr. PEPPER. Now, I want to know what you did, or what was done by anybody that you know of, after that Attorney-General's opinion was received, in the way of really finding out what the condition of the reclamation fund was, and the relation of assets to liabilities in respect to that fund?

Mr. FINNEY. They furnished quarterly statements and annual statements on the condition of the fund, but if you mean what steps were taken with a view of ascertaining whether there was a reserve fund in the reclamation fund sufficient to warrant the issuance of

further certificates, there were no steps in that line taken, as far as I know.

Mr. PEPPER. What I wanted to get at is whether anybody to the trouble in your department to find out whether the facts were such that the opinion of the Attorney-General validated or invalidated the certificate system.

Mr. FINNEY. They had not the slightest doubt about that. The opinion of the Attorney-General held the whole system to be illegal as far as I know.

Mr. PEPPER. You had previously made up your own mind to that effect, had you not?

Mr. FINNEY. Before he rendered his opinion do you mean?

Mr. PEPPER. Yes.

Mr. FINNEY. Well, I had my own individual opinion, yes, so that the issuance of the certificates was not warranted.

Mr. PEPPER. You testified, did you not, that Mr. Ballinger had I suppose regretfully—his doubts as to the legality of the system is that not so?

Mr. FINNEY. I think I said I understood him to have doubts on the question because he directed the case to be made up and submitted to the Attorney-General.

Mr. PEPPER. What was the conversation that took place between you and Mr. Ballinger upon that point of legality?

Mr. FINNEY. This conversation occurred either in the very last part of April or the first part of May, 1909, and my recollection is that he called me to his room and had before him some papers relating to this Grand Valley project, and a copy of the reclamation act in pamphlet form, and that he called my attention to two or three different sections of the act, one of which I read, and expressed, as I say, doubt as to whether there was any warrant of law for the issuance of those certificates.

Mr. PEPPER. Previously to this, you and he had agreed, had you not, that there was no such thing as the supervisory power of the President to withdraw land from entry for power sites?

Mr. FINNEY. I had expressed the opinion to him, yes sir, before I left the land office?

Mr. PEPPER. He had concurred in that opinion, had he not?

Mr. FINNEY. Well, I do not think I stated that he had concurred.

Mr. PEPPER. I am asking now whether he acceded to it or took a different view?

Mr. FINNEY. My understanding was that he was inclined to the same view, but he did not tell me, as I remember, that he agreed. As I stated in my direct examination, I think, my understanding was that he was going to talk the entire matter over with the Cabinet, or with the President, or with some one else.

Mr. PEPPER. And you had lately advised with him, had you not about the lack of executive authority to make the administrative withdrawals. They were hung up, I think, on April 13, were they not?

Mr. FINNEY. I do not remember the exact date.

Mr. PEPPER. About that date?

Mr. FINNEY. I certainly had participated in the action regarding the administrative site withdrawals.

Mr. PEPPER. Then along came this matter of the reclamation certificates, and Mr. Ballinger suggested to you, or you to him, that they were invalid.

Mr. FINNEY. I did not suggest the matter to him.

Mr. PEPPER. Whichever way it was—he suggested it to you?

Mr. FINNEY. He expressed doubts on the subject and directed me to make up the matter for transmission to the Attorney-General, and I made it up without argument. As my letter will show, there was no argument entered into on the subject, as far as I can recall.

Mr. PEPPER. How long after that was it that you came to the conclusion that there was no legal basis for the Indian cooperative agreement between the departments?

Mr. FINNEY. I did not come to a conclusion until it was submitted to me; until I had looked through the law. It was about the 1st of July, 1909. I only disposed of questions as they came up.

Mr. PEPPER. About when was it that you came to the conclusion that the supervising engineers in the Reclamation Service could not control, for legal reasons, the contractor who was working on that dam out West; was that later or earlier?

Mr. FINNEY. I do not know that I came to such a conclusion as that. On or about the 23d or 24th of June, 1909, I tentatively, in conference relating to the Roosevelt dam, expressed an opinion as to the construction of a clause in that contract.

Mr. PEPPER. But it is a fact, is it not, that in all these various matters in which legal reasons were found for undoing or reversing existing policies, you participated in the discussions and conferences, and either drafted these submissions or the letters which finally carried the matter to the Attorney-General in those cases, where they were carried there?

Mr. FINNEY. I took part in each of those matters which you have specified; yes, sir.

Mr. PEPPER. And you do not want to be understood as implying that the responsibility is yours and not Mr. Ballinger's for all those steps, do you?

Mr. FINNEY. Wherever I was called on to express an opinion under the law, I gave my honest opinion as a lawyer.

Mr. PEPPER. There is no doubt about that, sir; but what I want to know is whether you now wish it to be understood that that opinion was or was not shared in or corroborated or ratified or approved by Mr. Ballinger?

Mr. FINNEY. Well, your question is too broad for me to answer yes or no, because—

Mr. PEPPER. I am not one of those who insist on a yes or no answer. I think that is foolish. Just give your explanation.

Mr. FINNEY. Mr. Ballinger did not take definite action one way or the other on the Indian cooperative agreement.

Mr. PEPPER. He did not?

Mr. FINNEY. No, sir. On the forest administrative sites I gave him my views in full in a brief submitted on the subject and in a reply which was prepared by me after I had considered the brief of the Forest Service, and the whole matter was transmitted to the Attorney-General for him, and he has not ruled on that question yet. I understood Mr. Ballinger to agree with my views as to the administrative site. With reference to the cooperative certificates, as I have just

stated, I understood he entertained a doubt as to the legality of this. He was the moving party, and suggested that I make up the case for the Attorney-General. He did not give me any direction as to the form of the letter, and I wrote the letter which has been printed here and the matter was transmitted to the Attorney-General.

Mr. PEPPER. Now, my thought is this: Your testimony has suggested to me—I do not know whether it has to others—that you were appearing as the person to take the responsibility for all these things that had been done and that it was really not Mr. Ballinger at all. I want to know whether that is the position in which you wish to figure.

Mr. FINNEY. That is the position taken by certain newspaper writers, I believe, but I did not have any intention of trying to assume any responsibility that did not belong to me. I am just trying to tell the facts.

Mr. PEPPER. You are just trying to state the facts; you are not trying in any way to intimate or suggest that the ultimate responsibility for these various steps was yours, are you?

Mr. FINNEY. I presume that the responsibility would naturally rest with the head of the department, or the Assistant Secretary who signed or approved the action taken.

Mr. PEPPER. I do not mean a theoretical legal responsibility, but I mean actual, and in fact.

Mr. FINNEY. Oh, a number of these letters and papers that were prepared by me were sent in to Secretary Ballinger for his signature. He may or may not have read them. It is possible that he signed them without reading them through. I am responsible for the statements of facts made in those letters.

Mr. PEPPER. I understand that, but what I want to know is whether you wish it to be understood that you know of any important step taken in all these matters that we have been discussing which did not have, not merely the technical and theoretical, but the actual, substantial approval of Mr. Ballinger?

Mr. FINNEY. Well, I will have to say again that I do not understand that he took any definite action on the Indian cooperative agreement, and in the reclamation-certificate matter he merely expressed doubt and directed it to be forwarded. I did understand him to agree with my view as to the administrative sites.

Mr. PEPPER. And whether or not you took any action in the Indian cooperative matter is a thing which will be determined by reference to the telegram and other documents which are in the record?

Mr. FINNEY. Yes, sir; that is true. They speak for themselves.

Mr. PEPPER. But, excepting the particulars that you have last mentioned, you do not know, do you, Mr. Finney, of any important matter in which you figured throughout these transactions in which Mr. Ballinger did not actually and in fact participate in the discussion and ultimate disposition of the matter?

Mr. FINNEY. Yes, sir; I do. He had nothing whatever to do with the Cunningham coal cases.

Mr. PEPPER. I have not been questioning you about those. I mean, of course, confining ourselves to that part of the testimony about which I have been examining you.

Mr. FINNEY. Yes, sir; he participated to some extent in all of these matters which you have mentioned.

Mr. PEPPER. Now, you, as I understood it, drafted that bill, called the withdrawal bill, which was introduced, I think, by Senator Nelson, at the beginning of the present session?

Mr. FINNEY. Yes, sir; under the direction of the Secretary.

Mr. PEPPER. Yes; under the direction of Mr. Ballinger.

Mr. FINNEY. My recollection is that he made some suggestions as to the form.

Mr. PEPPER. That bill was a bill which purported to authorize the President to make withdrawals pending congressional action, or in aid of classification; is that not so?

Mr. FINNEY. Yes, sir.

Mr. PEPPER. And that bill came before the Senate Committee on Public Lands, and what was substantially a substitute for it was recommended by the committee?

Mr. FINNEY. I think that is a fact.

Mr. PEPPER. Then Representative Pickett introduced into the House a bill which was verbatim the bill reported by the Senate Committee on Public Lands, did he not?

Mr. FINNEY. I can not tell you; I have not read Mr. Pickett's bill. I understood that he introduced one.

Mr. PEPPER. Subsequently his bill was amended in such a way as to make it conform with the original bill introduced in the Senate, and which was made the subject of deliberation before the Senate Committee on Public Lands; is that not so?

Mr. FINNEY. I can not answer that. There was some amendment made to his bill, but just the language that was finally adopted by Mr. Pickett, I can not advise you.

Mr. PEPPER. Are you, or not, personally cognizant of the circumstances under which that Pickett bill was amended to conform to the original bill which was originated by the Senate Committee on Public Lands? Do you know anything about that personally?

Mr. FINNEY. Mr. Pickett asked me certain questions in regard to the matter, and his questions, as I recall them to me related particularly to the rights of persons who had public-land entries or claims on the land prior to the withdrawals and also as to the effect of these withdrawals, and I told him I would look into the matter, and I did, and later sent him a note embodying my conclusions.

Mr. PEPPER. What about the limitation of executive right to withdrawal to these temporary cases awaiting congressional action on a specific matter and the cases where classifications were to be made? Was not that a matter which entered into the amendment to the Pickett bill, to your knowledge?

Mr. FINNEY. No; I had no personal knowledge of that feature. I think there was some provision on that subject in the original bill. I have a copy of the original bill here.

Mr. PEPPER. Now, Mr. Finney, I understand you to be of the opinion that the Executive has no supervisory power to withdraw land from entry independent of legislation passed or to be passed for that purpose?

Mr. FINNEY. Yes, sir.

Mr. PEPPER. But that if such a power does exist in the Executive—in other words, if for a moment it can be assumed that you may be

wrong on that point—then this measure now before Congress will have the effect of restricting executive supervisory authority, will it not?

Mr. FINNEY. Yes, sir.

Mr. PEPPER. In other words, this legislation will not have the effect of confirming the executive right to withdraw, to the extent that many believe it at present exists, but will have the effect of conferring upon the executive much more limited rights of supervision.

Mr. FINNEY. No, I think—

Mr. OLMSTED. Mr. Pepper, do you really think it important to take up the time of the committee by cross-examining this witness as to the probable effect of legislation now pending and not yet enacted?

Mr. PEPPER. Mr. Olmsted, I thought that in view of the fact that it was brought out in the examination in chief that Mr. Finney had drafted the bill in question, and inasmuch as it is an issue before this committee as to what Mr. Ballinger has been really trying to accomplish in this matter of the executive power withdrawal, that it was germane to find out just what the relation is between the measure which Mr. Finney and Mr. Ballinger had drafted and caused to be submitted, and the broad supervisory power already existing, as found by the unanimous report of the Senate Committee on Public Lands. It seemed to me that it was a very important matter of policy.

Mr. OLMSTED. Possibly what he or Mr. Ballinger attempted to accomplish in the preparation of that bill might be germane, but what the legislation would finally be when it goes through Congress, this witness can not tell, nor anybody else.

Mr. PEPPER. If my question was understood as calling for an answer by way of prophecy on what congressional action will be, I withdraw it. What I meant to ask was what Mr. Finney and Mr. Ballinger were trying to do with those measures that they were drafting and getting different people to introduce?

Senator ROOT. Mr. Pepper, can you refer me to the act or the bill, the draft of the bill, that you have in mind?

Mr. PEPPER. Yes, sir; I think I have a copy of it.

Senator ROOT. Is it in the record?

Mr. PEPPER. No, sir; it is not in the record.

Mr. FINNEY. I have a copy of the bill as drafted by Secretary Ballinger for submission.

Mr. DENBY. Is that the Pickett bill, which validated prior withdrawals?

Mr. FINNEY. The bill now before the House is the Pickett bill. It is along the same general lines. I do not know whether it follows this same language exactly.

Mr. DENBY. It passed the House Wednesday.

Mr. GRAHAM. Two days ago; yes.

Mr. JAMES. But it passed with several amendments, did it not?

Senator ROOT. Mr. Pepper may have had some specific thing in mind that he was examining the witness about, and I thought I would like to know what it was.

Mr. PEPPER. I thought I had it before me.

The CHAIRMAN. The bill is here.

Mr. PEPPER. The bill that I was looking for was the bill as originally introduced in the Senate.

Senator ROOT. Is it this bill that Mr. Madison has in his hand?

Mr. FINNEY. I have that, Mr. Pepper. I thought you were looking for the Pickett bill. That is the withdrawal bill as prepared by Secretary Ballinger.

Mr. PEPPER. As originally introduced into the Senate?

Mr. FINNEY. Yes, sir.

Mr. MADISON. But that is not the Pickett bill.

Mr. FINNEY. No, sir. I do not know the form of the Pickett bill.

Mr. PEPPER. The Pickett bill, as I understand it, as originally introduced, Mr. Finney, was a verbatim copy of the bill recommended by the Senate Committee on Public Lands by way of a substitute to the bill that Senator Root is now examining.

Mr. FINNEY. I am not familiar enough with it to be able to answer you.

Mr. OLMSTED. The Pickett bill, Mr. Pepper, was materially amended in the Public Lands Committee of the House and again on the floor of the House.

Mr. PEPPER. Yes, sir.

The CHAIRMAN. You will find, Mr. Pepper, that that bill as passed is much more restrictive than this bill—that is, much more limited than this bill prepared by Mr. Finney.

Mr. PEPPER. I think that that is true.

The CHAIRMAN. I mean much more limited.

Mr. PEPPER. Yes, sir; and it seems to me, as far as we can judge from the newspaper accounts of it, much more limited in its scope than the one that was originally introduced.

Mr. MADISON. I think an examination of that bill will disclose that that is an error; that it confers upon the President the power to withdraw for any purposes which he may think proper.

Mr. DENBY. And confirm prior withdrawals?

Mr. MADISON. And confirm prior withdrawals; that it gives to the President, not to the Secretary of the Interior, but the President, the most general power to withdraw public lands, first for classification; second, whenever he thinks it is necessary for the benefit of the public.

The CHAIRMAN. For any public use?

Mr. MADISON. For any public use, and I think that is very general language, and confers very general power.

Mr. JAMES. That was placed in the bill, as I understand it, by amendment.

Mr. FINNEY. This gives general power to withdraw, pending legislation?

Mr. MADISON. It gives him the general power to withdraw whenever he thinks it is necessary for the public use and benefit.

Mr. PEPPER. Mr. Finney, this is an approximate statement, is it not, of the situation, that the bill drafted by you and Mr. Ballinger and originally introduced into the Senate, was a bill which limited the executive withdrawals to two cases, one to await the action of Congress at the next session in a specific matter; and, second, to await classification of the land withdrawn by the Secretary of the Interior with the provision that after the classification the lands were to be promptly restored for appropriation in accordance with the classification?

Senator Root. Mr. Pepper, if this memorandum that Mr. Madison has handed me is what you have in mind I should think that you limited it too much; that is to say, under that it seems to me that

the withdrawal by the Secretary is not to await the action of Congress at the next session. I do not find any such limitation there. Under that memorandum, if that became a law, he would be authorized to withdraw. When he considers legislation is desirable he is to report at the next session. But it does not seem to me that there is anything to require him to terminate the withdrawal, or the receiver of the land office, although Congress does not act at all. That is the main contention, that this constitutes the withdrawal indefinitely if Congress does not act.

Mr. FINNEY. Yes, sir.

Mr. PEPPER. That, as suggested by Senator Root, accords with your understanding of the bill as drafted and submitted?

Mr. FINNEY. Yes, sir.

Mr. PEPPER. And does it accord also with your understanding that the withdrawal may be for any purpose which the executive regards as consistent with the public welfare, or must it be with reference to specific legislation about to be introduced or pending in Congress?

Mr. FINNEY. My understanding at the time the bill was drafted, and my understanding of what we have in there, is that the executive was to be authorized to meet emergencies or new conditions, or any conditions which he thought are not covered by existing laws, by making a withdrawal of the lands.

Mr. PEPPER. Yes, sir.

Mr. FINNEY. But to call the matter to the attention of Congress, so that Congress, if it saw fit, might legislate to meet this emergency or this new condition.

Mr. PEPPER. Now, there is an act of 1901 on the statute books under which water-power permits are given, both within and without the national forests, for the use of power sites by the lessees, is there not?

Mr. DENBY. Before you go on to that, Mr. Pepper, may I suggest that since this matter has come into question here it would be a good idea to put that act or memorandum into the record?

Mr. PEPPER. Certainly.

Mr. DENBY. Of course, if the statement is undisputed that it was drawn by Secretary Ballinger before its submission to Congress—

Mr. PEPPER. Certainly, I would like to have this act and the others if they can be had.

Mr. DENBY. I suggest that you put that into the record and the committee can draw its own inferences as to the meaning of it.

Mr. PEPPER. I would like to have that act in and I would like to have the House bill.

The CHAIRMAN. Will you allow me to interrupt you, Mr. Pepper, a moment? The bill that I originally introduced, prepared by the Interior Department, our Committee on Public Lands reported it back with a substitute.

Mr. PEPPER. Yes.

The CHAIRMAN. As you are aware the bill was afterwards recommended to the Public Lands Committee and we have reported a new substitute. Since that substitute was reported the other day, or the very day we reported it, the House passed this bill and it has come over and we shall probably take the House bill and amend it either by adopting our substitute or taking some action upon that, so that the matter is still in esse, it is incomplete.

Mr. PEPPER. Would it be in accordance with the views of the chairman and Mr. Denby, if, before the record is closed, we were to put in—

The CHAIRMAN. We can put all those things in.

Mr. PEPPER. So that when we come to argument we will have in the record a complete legislative history of the act.

Mr. DENBY. I have no objection to that, though I now see no possible bearing upon it. I fancy from your line of questioning that you are seeking to draw an inference as to the attitude of the Secretary of the Interior prior to this date from an act performed very recently in regard to the submission of the bill to Congress. In that case I could see the propriety of putting this in the record, but I do not see what possible bearing upon this controversy or upon that attitude the action of Congress might have. What you are trying to get at is an action of the Secretary of the Interior, or the attitude of the mind of the Secretary, as I understand you.

Mr. PEPPER. It is very hard for me, Mr. Denby, to specify just which of those measures are or are not germane to the line of questioning that I have been putting to Mr. Finney. I think it would do no harm to put them all in.

Mr. DENBY. Put in the whole Congressional Record if you like; I have no objection to it. Only I can not see the bearing of it.

Mr. PEPPER. Well, perhaps, you will ultimately be of that opinion, or it may be that I will be able to satisfy you that they have a bearing.

Senator ROOT. I will be very glad to have them in. I am fully as much interested in the question of what sort of legislation is needed here as I am in any other question.

The CHAIRMAN. I will gather up all the bills in both Houses and have them put into the record if that will shorten the proceedings.

Mr. PEPPER. Yes, sir; it will.

The CHAIRMAN. It will simply take more ink and take less time here.

Mr. PEPPER. All right.

Mr. FINNEY. In view of Mr. Denby's statement, I think you stated that Secretary Ballinger prepared—

Mr. DENBY. I understood from the question you were asked whether or not the Secretary prepared that memorandum to take the form of a bill in Congress and put his authority behind it. If that is the case, I suggest that the memorandum itself be made a part of the record. I have not seen it, but I suggest that it go into the record as expressing the Secretary's opinion.

Mr. FINNEY. I want to state that this is a copy of a proposed bill that was prepared by me under Secretary Ballinger's direction and is pursuant to the suggestion made in his annual report to the President; that this is a copy of the bill which was submitted.

Mr. JAMES. Now, under that bill he has the right to withdraw land for the purpose of awaiting the action of Congress, has he?

Mr. FINNEY. Yes, sir.

Mr. JAMES. Well, now, suppose Congress does not act, could he restore it, or how long would it remain withdrawn?

Mr. FINNEY. This bill provides that when in the opinion of the Secretary of the Interior the reason for any such withdrawals has ceased to exist and no action has been taken thereon by Congress, he may restore the same to the operation of the public-land law.

Mr. JAMES. So that if the reasons existed and Congress had not acted, the land would remain withdrawn, would it?

Mr. FINNEY. Within the discretion of the Secretary the land might remain withdrawn.

Mr. JAMES. So that under that bill it would be just the same as giving him the right to withdraw it permanently if the reasons remain and he was of the same opinion?

Mr. FINNEY. Yes, sir; except another section of the bill requires him to report all withdrawals he has made to Congress. We thought that would give Congress information upon which——

Mr. JAMES. But if he reported to Congress and Congress would not act, and he would be of the same opinion that the action was still necessary, the land, of course, would still remain withdrawn?

Mr. FINNEY. Yes, sir.

Mr. JAMES. So that the bill virtually gives the same right as a permanent withdrawal if the Secretary remains of the same opinion?

Mr. FINNEY. Yes, sir; in the absence of action of Congress——

Senator ROOT. Subject to reversal by Congress?

Mr. JAMES. Certainly, as the right permanently to withdraw it would be subject to reversal by Congress.

Mr. FINNEY. That is correct.

Mr. PEPPER. Now, calling your attention again to the act of 1901, under which permits are given for the use of power sites in the public domain?

Mr. FINNEY. Yes, sir.

Mr. PEPPER. Was it or was it not your thought in drafting this bill that withdrawals could be made of land for disposition by permit under the act of 1901, or could such withdrawals be made only to await new legislation by Congress?

Mr. FINNEY. You mean my thought?

Mr. PEPPER. Yes. You and Mr. Ballinger conferred about this. Was it your thought when this withdrawals bill was framed as it was that withdrawals might be made by the Executive in order that disposition of the land withdrawn could be made by permit under the act of 1901?

Mr. FINNEY. No, sir. The purpose was to withdraw these water-power sites and to keep them withdrawn until Congress should provide a method for their disposition other than that contained in the act of 1901.

Mr. PEPPER. If the supervisory power exists independently of this legislation the withdrawal of land for disposition under that act is proper, is it not?

Mr. FINNEY. The withdrawal for disposition?

Mr. PEPPER. Under the act of 1901 it is a proper exercise of the supervisory power if you are wrong in thinking it does not exist.

Mr. FINNEY. No; I do not understand that even if the Executive has the power to make general withdrawals of land that he has the right to withdraw for disposition under a part of the public land laws only. Of course, that is my individual opinion, though.

Mr. PEPPER. I am not speaking of withdrawing with reference to a part of the land laws only, but withdrawing from all forms of disposition excepting under the act of 1901.

Mr. FINNEY. Yes, sir; the situation is just the same as if the Secretary withdrew all lands in the State of Wyoming from the operation

of all laws except the desert law, for instance. I do not think he has that authority, because Congress has said that the homestead and certain other laws shall apply to those lands.

Mr. PEPPER. As a final matter, let me ask you whether it was or was not your thought in drafting this bill that there might be withdrawals under it, which withdrawals of lands might thereafter be disposed of under the act of 1901?

Mr. FINNEY. No, sir; I am very sure we did not have that act in mind.

Mr. PEPPER. Would it be your thought that such withdrawals would be authorized under that act?

Mr. FINNEY. Of this kind—of which kind?

Mr. PEPPER. Withdrawals made by the President, not for the purpose of new water-power legislation, but for disposition under the existing license act of 1901?

Mr. FINNEY. I think so; I think the President could withdraw them; withdraw the lands and classify them as water-power sites, and, if Congress took no action, he might possibly restore them to disposition under the act of 1901 or any other law that might apply. The act of 1901, you know, grants a mere temporary easement.

The CHAIRMAN. Mr. Finney, there is no law in existence under which entries can be made of what are called power sites—I mean, by which the land can be entered as power-site land?

Mr. FINNEY. No, sir; there is no law under which land can be entered specifically for the purpose of generating power.

The CHAIRMAN. And the law of 1901 is simply a license law to permit?

Mr. FINNEY. It grants a license revocable at the will of the Secretary of the Interior, or the Secretary of Agriculture if within the forest reserve.

The CHAIRMAN. It confers no title in fee?

Mr. FINNEY. None whatever.

The CHAIRMAN. A withdrawal, then, for power sites is a withdrawal, then, for some indefinite purpose that has not yet been formulated by Congress, is it not?

Mr. FINNEY. Yes, sir; that is what they were made for.

The CHAIRMAN. Congress has never yet provided a law by which land can be entered for power sites. Is not that true?

Mr. FINNEY. No, sir; they have not.

Mr. PEPPER. In your answer to the chairman you are making a distinction between entry for power sites and disposition for power sites by temporary licenses, are you not?

Mr. FINNEY. Yes, sir. I mean an entry by which the fee may ultimately be acquired, as distinguished from a mere revocable license or easement.

Mr. PEPPER. Mr. Finney, on page 3071 of the record you made some general statements about the way in which the forest reserve treats the claimant of mineral lands, and among other things you stated, I think, that it was a custom of the Forest Service to proceed to sell timber on a claim regardless of the location?

Mr. FINNEY. Yes, sir.

Mr. PEPPER. Were you referring to matters within your own knowledge then or what was the source of your information if such was the general practice or course of the forestry?

Mr. FINNEY. Well, I had two things in mind. One was an actual case on the Plumas Reserve in California where there were some locations which I, myself, thought were illegal and where it was my information that the forest officers were directed to sell off the timber. Those were the Yard cases.

Mr. PEPPER. That was in 1906 when you went out there as the representative of the Land Office, was it not?

Mr. FINNEY. I went out there in 1906 with one of the forest officers; yes. The cases had been pending until, I think, 1909, when Secretary Ballinger held a number of them to be nonmineral.

Mr. PEPPER. And the reason why that matter was taken up at the instance of the Forest Service was because they wanted to get into position to sell the timber on claims that they believed to be invalidated. Is not that so?

Mr. FINNEY. That is one of the reasons; yes, sir.

Mr. PEPPER. They proceeded in a reasonable and proper way in that matter, did they not?

Mr. FINNEY. In that case; yes, sir.

Mr. PEPPER. That is one of the two that you had in mind. What was the other one?

Mr. FINNEY. The other matters were letters which have been received from miners in various places complaining that the forest officers had arbitrarily cut the timber from their claims.

Mr. PEPPER. Have you been at any pains to find out whether those were the facts or have you any memorandum or lists which would enable us to investigate whether those claims were well founded or not?

Mr. FINNEY. My recollection is, Mr. Pepper, the letters were referred to the Agriculture Department. That is the way we dispose of those claims.

Mr. PEPPER. Did you individualize those cases or have you just a hazy impression that there has been such a series of complaints?

Mr. FINNEY. I know I have seen some letters complaining of such a condition of affairs during the past six months; perhaps two or three, and they were referred to the Secretary of Agriculture.

Mr. PEPPER. But whether or not they were well founded or whether or not the complaints had a basis of fact is a point upon which you are not, I suppose, ready to testify?

Mr. FINNEY. I think that my statement here is correct that they go to the extent of taking possession of a location if in their opinion it is invalid. My understanding is and my recollection is that a number of ranger stations have been put upon locations or claims which were regarded as being invalid.

Mr. PEPPER. Well, if those administrative site withdrawals were valid executive acts, then the cutting of timber on the withdrawn land was proper, was it not?

Mr. FINNEY. No; not if the man's claim was a valid one.

Mr. PEPPER. That simply means that the executive withdrawal did not take effect at all; that is, it could not divest rights which it had already vested; is not that the point you make?

Mr. FINNEY. The point I make is that the forest service could proceed in all cases as they did in the Yard case and actually to determine the rights of the locator or squatter to his land before any timber is cut off.

Mr. PEPPER. I think you instanced the Yard case as one of the two cases which were in your mind as showing that the forester went to work to cut timber regardless of the claim.

Mr. FINNEY. I did not make myself clear, I guess.

Mr. PEPPER. Well, I would like to have you make yourself clear on that point.

Mr. FINNEY. The Yard case, as decided by the Secretary of the Interior, covered a large number of locations made in the Plumas Forest Reserve, but the cases that came up did not cover all of these locations. My understanding is that some of the locations not actually involved in that hearing, that that course had been adopted, and as I told you my personal view in that particular case, it was very nearly justifiable, at least, because I am satisfied that those were not good locations. I base my statement in part on the Use Book.

The CHAIRMAN. Mr. Finney, I would like to ask you some questions. What is the area of a single lode of quartz claim?

Mr. FINNEY. The maximum size of a lode mining claim under the law is 1,500 feet in length and 600 in width, or 20.66 acres.

The CHAIRMAN. What is the placer claim?

Mr. FINNEY. A single individual location may not exceed 20 acres, but 8 qualified persons may locate not exceeding 160 acres.

The CHAIRMAN. Now, under the general mining law, outside of the forest reservations, is not the man who locates a mining claim, whether lode or placer claim, entitled to the free use of the timber on his claim for the development of his mine?

Mr. FINNEY. Yes, sir.

The CHAIRMAN. Is that not a fact?

Mr. FINNEY. Yes, sir.

The CHAIRMAN. And if he did not have that same privilege, if he locates a mining claim within a forest reserve, but the forest reserve sells the timber off of it, he does not have the privilege that he does on a mining claim outside of the forest reserve.

Mr. FINNEY. That would be true if they took that action; yes, sir.

The CHAIRMAN. In other words, if a man locates a mining claim in the forest reserve and the forest reserve deprives him of the timber for developing that claim, then he is deprived of a privilege that a miner who is outside of the forest reserve has?

Mr. FINNEY. Yes, sir. I would like, Mr. Chairman, to also state right here that I base my answer in part on the Use Book issued by the Forest Service in 1908.

The CHAIRMAN. What page?

Mr. FINNEY. Page 77 of the Use Book.

Mr. PEPPER. Will you read that, Mr. Finney?

Mr. FINNEY (reading):

The question whether the Government has or has not the right to sell timber from a mining or other valid land claim upon which final proof has not yet been made has never been settled in the courts. When a claimant is actually occupying and developing his claim, the timber should not be disposed of by the Forest Service. If, however, any claimant is not actively using his claim, forest officers should not hesitate to allow, either under sale or "free use," the cutting and removal of dead, down, diseased, or insect-infested timber, especially when they consider such timber a danger to the forest. If the danger is great, it should be reported to the forester, even though the claim is actively used.

"No attempt should be made to sell the sound standing green timber upon unperfected valid mining or other claims, whether they are being actively used or not."

The Forest Service has the undoubted right to sell any timber upon a land claim to the rightful claimant for any use whatever.

Mr. PEPPER. Would you amend that as you think it ought to read in order to be an equitable and obviously sensible provision?

Mr. FINNEY. Well, I would omit in the first instance that sentence which says, "that questions as to whether or not the Government has the right to sell timber from a mining or other valid land claim altogether," because if the claim is valid the Government has no right to cut and sell the man's timber. I am satisfied of that under the law. Then I would amend the next sentence which says, "when a claimant is actually occupying and developing his claim," so as to read, "if the claim is a valid, bona fide claim being maintained as required by the law, no interference will be had with the timber unless it is diseased or insect-infested," when a notice should be served upon him to remove it otherwise.

Mr. PEPPER. Are you not simply changing the phraseology?

Mr. FINNEY. I do not see it that way; no.

Mr. PEPPER. As I heard it read it stated that the supervisor was not to hesitate to deal with diseased or insect-infested timber even where the claim was a valid one and where the locator was developing it. Is not that so?

Mr. FINNEY. Yes; but on a mining location a man would not have to be there every day taking out minerals. Under the law he can hold his claim by performing \$100 worth of work annually, and a man may do that in ten days and be away for the rest of the year, intending to come back the next year and do another \$100 worth of work. The danger of that is that it might be treated as a claim not being actually used and the timber may be cut off.

Mr. PEPPER. Do you seriously think, Mr. Finney, that what you suggest would be a reasonable and proper interpretation of that forest regulation?

Mr. FINNEY. I do not know what other interpretation I can give it.

Mr. PEPPER. I mean that the absence of a man for ten days from his claim would, under that regulation, mean an instruction to the supervisor to go in—

Mr. FINNEY. I did not say an absence of ten days. I said he might be working ten days and be absent the rest of the year.

Mr. PEPPER. If he was really developing it, is there anything in that regulation—

Mr. FINNEY. It leaves it—it must be largely left to the judgment of the field officer.

Mr. PEPPER. Of course it must, and what you are speaking of now and complaining of is an action of abuse of discretion by subordinate officers in the field. Is that it?

Mr. FINNEY. I assume that probably complaints arise from those cases. I do not want to be understood as criticising the Forestry Service.

Mr. PEPPER. I wanted to give you an opportunity to say that, because I thought the language on page 3071 amounted to a serious criticism; but if it was not so intended—

Mr. FINNEY. I am and have been on the very friendliest terms with Mr. Pinchot and the Forest Service. I am in favor of forest reserves, but I do think there should be some modifications of the laws and regulations relating to the reserves. That is my position.

Mr. PEPPER. Those complaints you spoke of were from people who chafed at being compelled to get permits for cutting trails and for

putting in tramways in the public domain; those are complaints from people who heretofore have been accustomed to helping themselves to the public land without the necessity of a permit or other restriction.

Mr. FINNEY. Out on the public domain they would not have to apply for a permit. In the forests they do.

Mr. PEPPER. Those complaints you made a point of in your testimony in chief are complaints from people who are objecting to the requirements of a permit before they can treat the public domain as their own, for the purpose stated?

Mr. FINNEY. No; I did not say that.

Mr. PEPPER. I know you did not, but I want to know whether that is not what it amounts to.

Mr. FINNEY. No; the impression I gathered from some of those complaints was that they were really bona fide claimants and that the local officer had been, perhaps, unfair and unreasonable in his treatment of them.

Mr. PEPPER. The only thing you mentioned, however, was the insistence upon a permit to do the thing you specify; that is, a proper and reasonable regulation, is it not?

Mr. FINNEY. I have been talking about a number of things this morning. Are you referring to my testimony of Saturday?

Mr. PEPPER. I am referring to your testimony in chief where you stated in answer to Mr. Vertrees's question that complaints had come from people who were aggrieved because they had to take out permits to cut trails, build camps, construct tramways, and to put up telephone lines in the public domain. That they did not like the permit system. Is not that right?

Mr. FINNEY. I said that they had to have permits for various things needed in connection with mining—miners' cabins, telephone lines, trails, tramways, etc.; yes, sir.

Mr. PEPPER. You do not wish to be understood as criticising the existence of the permit system, do you? That is a reasonable and proper measure for the protection of the public domain in the national forests, is it not?

Mr. FINNEY. If those regulations can be so framed and limited as to not hamper or restrict the miner, I think they are all right.

Mr. PEPPER. Is not the object of them to hamper and restrict the miner to an extent necessary for the protection of the public domain?

Mr. FINNEY. Possibly that might be the object; yes, sir.

Mr. PEPPER. Is not that the only purpose of it? Do you not know that to be the theory of the permit system within the national forests?

Mr. FINNEY. I think so, but I think possibly in their enthusiasm some gentleman may have gone too far.

Mr. PEPPER. That is all you have meant to suggest, that in certain individual cases certain subordinate officers have exceeded their authority or abused it. Is not that so?

Mr. FINNEY. No; I do not know that I would hold subordinate officers responsible for the regulations.

Mr. PEPPER. Are there any other regulations that you can point to except the one which you have read which justifies the suggestion that the forestry has made any unreasonable regulations?

Mr. FINNEY. Yes, sir.

Mr. PEPPER. Will you point to that case? You have made general statements and I want to pin you down to something definite.

Mr. FINNEY. Well, under the act of June 11, 1906, which provides for the lease of homestead in the forest reserve under the discretion of the Secretary of Agriculture, I understand the practice to be in a great many cases instead of allowing a man to have his homestead, is to issue him a permit for the use and cultivation of the land for a period of years, and if he demonstrates to the satisfaction of the local forest officer the arable character of the land they then throw it open to entry. He has to serve for four or five years a term of probation before he can get the homestead entry allowed.

Mr. PEPPER. Is there anything else then in your mind? I do not want to prolong the discussion; I want to get the instances so when we come to argue it we can deal with them. Is there anything else than that?

Mr. FINNEY. Yes, sir; I have in mind right at present one or two cases where it has been alleged that ranger stations were established with the design of taking improvements which had been placed upon the lands by the citizens.

Mr. PEPPER. Can you specify those so that we can look into it and find out if the intimation that has come to you is based on facts?

Mr. FINNEY. I certainly can—one of them, at least. One of them is on my desk now from a man in California. Some of the others were referred, I think, over to the Agriculture Department. I presume they are looking after them.

Mr. PEPPER. Will you be good enough to furnish me, if the chairman will permit it, with any list of specifications or other data which will enable me to find out what the fact is in regard to the basis of these claims?

Mr. FINNEY. I will furnish you with that claim and such others as I can find without taking too much time. I have other work to do.

Mr. PEPPER. I realize that you have multitudinous duties and I do not want to add to them. I want to find out whether these are merely claims from Indians who have been compelled to put on clothes or whether there is some basis for them. You will furnish me with these specifications?

Mr. FINNEY. I will do so; yes, sir.

Mr. VERTREES. Mr. Finney, if I have understood you—

Mr. BRANDEIS. I beg your pardon, but I am proposing to go on with Mr. Finney.

Mr. VERTREES. Yes, sir.

Mr. BRANDEIS. Mr. Finney, it appears at page 3092 of the record that you promised to carefully go over the Senate Document 248 with a view to pointing out to the committee whether there was any evidence in that document which tended to support the statement of the Attorney-General that Glavis had taken no steps whatsoever in connection with the contemplated or suggested criminal proceedings against the Alaska coal claimants. Have you made that examination of Senate Document 248?

Mr. FINNEY. I have examined the document; yes, sir.

Mr. BRANDEIS. Have you any evidence in that document to call to the attention of the committee?

Mr. FINNEY. Yes, sir. I call attention first to the statement in Mr. Dennett's letter on pages 115 and 116 of the Senate document.

Mr. BRANDEIS. Well, now, that statement was considered in your discussion. I think I, myself, called it to your attention on pages 3086 and 3087. Obviously, my inquiry related to something else.

Mr. FINNEY. Your last question asked me if I found anything in the document.

Mr. BRANDEIS. Do you want to enter into an argument that there is something in that document which tends to show that the statement of the Attorney-General that he had taken no step whatsoever is well founded?

Mr. FINNEY. I can not, of course, undertake to speak for the Attorney-General, Mr. Brandeis; but I will say that in my opinion there are some things in that document which might have moved him in making that statement, and among them is this one.

Mr. BRANDEIS. Now, you say "this statement." Which one?

Mr. FINNEY. In Mr. Dennett's letter, pages 115 and 116 of the Senate Document.

Mr. BRANDEIS. That is the statement I called your attention to.

Mr. FINNEY. I told you it was in Mr. Dennett's letter, and you called my attention to the page.

Mr. BRANDEIS. Yes; perhaps I might have suggested the page directly when you were in doubt where it was in the document. I had supposed we had disposed of that, because we went into it very fully.

Mr. FINNEY. I do not care to argue it.

Mr. PEPPER. Now, I ask you was there anything besides the matter we discussed at very considerable length on pages 3096 and 3097 and in that neighborhood; now, do you find anything else?

Mr. FINNEY. There are certain statements made by Mr. Schwartz and Mr. Glavis which would in a general way show that the Alaskan matters were pending and not closed, which might be construed as corroborating or supporting that statement.

Mr. BRANDEIS. Give us specific statements which tend to show that Glavis had taken no steps whatever in connection with the contemplated criminal proceedings. I would like to have you read into the record everything which, in your opinion, is evidence of that fact.

Mr. OLMSTED. Now, Mr. Chairman, I want to interpose once more, for the last time, my objection to this character of cross-examination, or alleged cross-examination. Here is a picture in one of the newspapers which is a representation of this committee in 1950 coming into this investigation with beards a foot long and bystanders gazing upon us in awe.

Mr. JAMES. They are doing that now.

Mr. OLMSTED. It seems to me that this sort of cross-examination justifies such a cartoon as this. Here is a document of over 800 pages of testimony of other witnesses, and documents prepared by other people, and this witness, a clerk in one of the departments, is asked for his opinion on the document, is asked for his opinion as to the documents in there, whether they do or do not establish certain things. That is the very thing that this committee was appointed to ascertain, and counsel are expected to help us in that regard by pointing out the evidence on either side if they find it there. We do not care what the opinion of this witness is; it will not help us a particle.

Mr. BRANDEIS. I am not asking him——

Mr. OLMSTED. You asked him to point out any other matters in there and give his opinion. His opinion on them will not help us a particle.

Mr. BRANDEIS. No; but the matter will help us when we reach the argument.

Mr. OLMSTED. You can point them out when you argue the case.

Mr. BRANDEIS. If it is a matter of saving time, I think time would have been saved by allowing the witness to give that statement. I think as a matter of fact there will undoubtedly be a very long investigation; but if it exists it is because of just such groundless statements which have been submitted by officers of the Government, high and low, and we desire to have these questions investigated, and it is absolutely necessary that we should get to the bottom of them. You will have to remember, Mr. Olmsted, that these charges upon which Mr. Glavis was condemned by the President, the charge that he delayed, the charge that he had suppressed documents—these are charges on which Mr. Glavis has never had an opportunity to be heard, either in writing or orally, charges which he did not know before he was condemned. Now, I say that we have the right, as bearing upon the animus and as bearing upon the reliability of these statements on which Mr. Glavis was condemned without hearing, we have the right to say whether these statements are absolutely groundless, and we have the right to go to one who is, as Mr. Finney is, the general utility and confidential man of the Secretary, a man who is aiding and who is assuming here a very large part of the responsibility. We have the right to go to him and ascertain from him what there was there, because it bears upon the purpose as well as upon the facts.

Mr. OLMSTED. You have the right to get from him everything that he knows on one side or the other. I for one, and I believe I voice the sentiment of the entire committee, want to get all the facts on either side, or both sides, that have any relation at all to the matter we are investigating. But I submit to you as a lawyer that the opinion of this witness on the opinion of the Attorney-General is something that won't help us at all, nor his opinion as to what evidence is in that volume of testimony. We have got to pass upon that testimony. His opinion will not change it a particle. If he gives the opinion that there is no evidence in there sustaining the Attorney-General, that will not help us if we find the evidence is there. If he gives the opinion that there is evidence, that will not help us unless we determine whether there is. It is for this committee to determine whether or not there is evidence in there, and it is for counsel to point out the evidence on either side, and not for this witness to do it. His opinion will not help us a particle.

Mr. GRAHAM. Might I say a word there? For my part I would like to hear Mr. Finney's answer to the question, and I do not think it is giving his opinion.

Mr. OLMSTED. He was asked to give his opinion, and if he answers the question, he will give his opinion.

Mr. GRAHAM. He qualified to some extent as an expert on this document and on the opinion of the Attorney-General and on his summary.

Mr. OLMSTED. I do not believe he is an expert on the opinion of the Attorney-General.

Mr. GRAHAM. One minute, Mr. Olmsted, and then you can consider it right or wrong, as you please. That is my point of view. I have tried to go through it carefully, but I find it very difficult to do it, and I want help.

Mr. OLMSTED. The counsel ought to help.

Mr. GRAHAM. Will you kindly listen?

Mr. OLMSTED. I will, very gladly.

Mr. GRAHAM. I know it is difficult, but I will ask you to do it. If the matter inquired for is in the Senate Document 248, it will help me greatly to have Mr. Finney point it out. If Mr. Finney does not know of it in there and admits that, it does not prove anything; it simply proves that he can not locate it, but it does not prove that it is not there, and we still have the right to search for it. But it is simply inferential evidence that it is not there if such a clever and capable man as Mr. Finney, familiar with the document, can not locate it. That is evidently what the question calls for. If it is in there and he points it out, we are saved a great deal of trouble hunting for it. If he says he does not know, we can still look for it if we choose.

Mr. OLMSTED. Will you rely upon his testimony as to what evidence is in that volume of 700 or 800 pages? Will you not have to read it yourself anyway?

Mr. GRAHAM. If he points it out to me, I will certainly rely on it, because I will find it where he points it out and save myself that much trouble. If he says he does not know whether it is there or not, it will be my duty to look further.

Mr. JAMES. This was acted upon last Saturday and the examination proceeded upon this line and the witness was directed to carefully examine the record and come prepared to give this testimony, and this objection comes too late.

Mr. OLMSTED. The witness was not directed by anybody.

Mr. JAMES. But the general acquiescence of the committee was that he was, and you raised that point last Saturday.

Mr. OLMSTED. The objection was not passed upon then, and I have raised it again.

Mr. JAMES. The chairman told the witness to proceed, and you did not make any motion that the witness should not proceed along that line.

Mr. OLMSTED. I make it now.

Mr. JAMES. I make the point that it comes too late.

Mr. OLMSTED. You are getting technical.

Mr. JAMES. I am following your lines. You are getting technical with the witness.

Mr. GRAHAM. I ask, Mr. Chairman, that the witness be allowed to point out in answering the question anything in the Attorney-General's synopsis which tended to answer the question asked.

Mr. JAMES. If he can point it out, we ought to be willing to hear it. This is a big document, and he is an expert to some extent, and he has shown here familiarity with it. If he can point out anything that will sustain that disputed point in the opinion of the Attorney-General, the committee ought to be willing to have him do so.

Mr. OLMSTED. I suppose Mr. Vertrees will then desire the privilege of cross-examining him on the whole 802 pages of that document.

Mr. JAMES. If he can elucidate anything, we ought to hear him.

Mr. GRAHAM. May I suggest, Mr. Olmsted, that we ought to have the picture that you have referred to put in the record?

Mr. OLMSTED. I should like to have it inserted.

Senator FLETCHER. It seems on page 3092 that foundation for this question was laid, and that Mr. Finney was asked if he would be prepared at this time to point out evidence in this document to sustain the statement of the Attorney-General, and he said, "I will." There was some objection made to that on the part of Mr. Denby, but Mr. Olmsted concluded the discussion by saying "Let him cross-examine him on the whole 700 pages."

Mr. DENBY. Mr. Chairman—

Mr. OLMSTED. The record is not quite accurate. That is not what I said. I did say "that will lead to his cross-examination upon the whole 700 pages." Now, as it is likely to take more time to discuss my objection than it would to read the whole number of pages, having expressed my view of the matter, I am willing to let it go at that.

Mr. FINNEY. Before I begin to answer, I want to correct two impressions. I am not the confidential man of Secretary Ballinger. I am assistant to the Secretary, a statutory position, and my duties are as I have defined them. In the second place, I do not pretend to be an expert on the Attorney-General's opinion or on this document, although I have read the document.

Do you wish me to proceed with my answer?

Mr. BRANDEIS. I do, sir.

Mr. GRAHAM. Let me understand there, Mr. Finney. You do not mean to say, do you, that you are not in the confidence of the Secretary, or that he has not very great confidence in you, when you say you are not his confidential man?

Mr. FINNEY. No, sir. I mean I am not his confidential man, in the sense of a secretary or private secretary, or such a position as that.

Mr. GRAHAM. Your testimony up to this time would indicate that he did have very great confidence in you and in your judgment.

Mr. FINNEY. Yes, sir.

Mr. JAMES. You enter a denial as to being a general utility man?

Mr. BRANDEIS. That is testified to by Secretary Pierce; he does not deny that.

If you will read into the record whatever you deem to be evidence to support the Attorney-General's statement that no steps were taken by Mr. Glavis in connection with the investigation or contemplated criminal proceedings—

Mr. FINNEY. In Mr. Dennett's letter on page 115, the statement was made by Glavis that the papers should be furnished him, because the statute of limitations "will prevent criminal prosecution after next October. The cases therefore must be presented next month."

Mr. VERTREES. What was the next month—it was May, was it not?

Mr. FINNEY. May, 1908. On the next page it states:

When Mr. Glavis was here in May, 1909, I called his attention to the fact that complaints were being made that these papers were not on file in the local land office, and therefore were not open to consultation. He cited the authority which was given the register and receiver at Juneau to send these papers to him and under which he held them. Upon my asking him whether they had been submitted to the grand jury, he said "No!"

Mr. BRANDEIS. Those passages which you have just read are the two passages which I read to you?

Mr. FINNEY. Yes, sir.

Mr. BRANDEIS. And which you discussed, and were discussed between us on pages 3086 and 3087?

Mr. FINNEY. That is correct.

Mr. BRANDEIS. Now, go on.

Mr. FINNEY. Now, on page 236 of Senate document, at the bottom of the page, in Mr. Schwartz's letter, Glavis in all his status reports, including the Christopher group, says:

In the course of this investigation many affidavits were secured, but owing to Mr. Jones's unfamiliarity with the Alaska coal-land laws, he was only partially successful in securing evidence showing the true situation.

Then, at the bottom of the page he says: Mr. Glavis advises him that "inquiries and investigations would be concluded before the sixty days," which he had been allowed. And on page 440—

Mr. BRANDEIS. Will you, before you leave that—

Mr. VERTREES. Let him go on with the evidence you asked for.

Mr. BRANDEIS. I think I may ask him a question.

Mr. VERTREES. Do you have something else on that point?

Mr. BRANDEIS. Have you something else on that point?

Mr. FINNEY. I am not through with that particular point.

Mr. VERTREES. Do you have something else on that particular point?

Mr. FINNEY. I was going to call attention to that particular reference.

The CHAIRMAN. Go ahead. He asked you to point it out. Point out the whole of it.

Mr. BRANDEIS. Go ahead.

Mr. FINNEY. On page 440 of the Senate document, in a letter addressed by Mr. Schwartz to Mr. Dennett, the commissioner, dated January 2, 1909—on page 404 is a table of unfinished work pending on December 1, 1908, and among the cases pending were 12 criminal cases in the Washington and Idaho division. Now, of course, I do not contend that this proves that this criminal matter was this identical one, but taking it in connection with previous statements, it may be assumed that this was one of the matters still pending and undetermined then.

Now, in Glavis's letter to Schwartz, on page 515 of Senate document, he goes on to speak in the last paragraph of his letter of the investigations of conspiracy under the coal-land laws. He states he believes the necessary investigations in the State of Washington can be finished in two weeks before the period given him in which to interview these 900 claimants.

All of these statements would tend to give the impression that the matter was under investigation by Glavis, but that no conclusion had been reached. Especially in connection with the statement made, which Mr. Dennett alleges was made in May, 1909, which was after the time when Glavis said that criminal prosecutions should be brought under the statute, and he had taken no action. There may be other statements in the book, but you would have to look it through carefully in the endeavor to comply with the request.

Mr. BRANDEIS. That is all that you have found?

Mr. FINNEY. That is what I found.

Mr. BRANDEIS. Now, you say that those references to which you have referred, that statement in the letter of Glavis of April 27, 1909,

the statement of his report of criminal cases pending, which appears on page 440 of Senate document, and the reference on page 236 as to the deficiencies in Mr. Jones's investigation—they all show, do they not, that the matter was pending, but had not been disposed of, so far as they show anything?

Mr. FINNEY. Yes, sir.

Mr. BRANDEIS. Then, if it was proceeding, is it not directly contrary to the statement of the Attorney-General that no step whatsoever was taken in connection with it?

Mr. FINNEY. No; I think not, when you consider it in connection with Mr. Dennett's statement, which alleges, at least, that Glavis told him that no action had been taken within the time under the statute within which these proceedings might be brought.

Mr. BRANDEIS. Are you not misquoting Mr. Dennett?

Mr. FINNEY. Possibly I am.

Mr. BRANDEIS. You are not doing it intentionally?

Mr. FINNEY. Certainly not. I did not say that I am misquoting him.

Mr. BRANDEIS. Did not Mr. Dennett quote Mr. Glavis as saying that the matter was not referred to the grand jury? He didn't say no action was taken, did he?

Mr. FINNEY. Upon my asking him whether it had been submitted to the grand jury, he said no.

Mr. BRANDEIS. Do you wish this committee to believe it to be your opinion that no step can be taken in connection with a contemplated or possible criminal proceeding if, as a matter of fact, in the end it is concluded not to submit the matter to the grand jury?

Mr. FINNEY. Oh, it depends on the definition of "step." Of course a man might make some preliminary investigation. He ought to investigate his facts before they go to the grand jury.

Mr. BRANDEIS. Let me ask you, not referring to a hypothetical case, but to what actually happened. I will refer you now to page 2417 of this record.

Mr. FINNEY. I do not believe I have that here.

Mr. BRANDEIS. It is in No. 25 of volume 4.

Mr. FINNEY. Here it is.

Mr. BRANDEIS. Perhaps if you will look first at page 2414, you will find on page 2414 a long letter which extends from page 2414 to page 2416 of this record, a letter of Jones to Todd.

Mr. FINNEY. Yes, sir.

Mr. BRANDEIS. Which sets forth in synopsis the evidence of 20 witnesses bearing upon the question as to whether the locators in the Christopher and Simmons group have been guilty of a criminal conspiracy. Now, do you wish this committee to understand that in your opinion the collection of these affidavits and the submission of them to the district attorney was not some step in the investigation and consideration as to the bringing of a criminal proceeding?

Mr. FINNEY. This was the report of Mr. Jones.

Mr. BRANDEIS. Well, it is made under Mr. Glavis's direction, isn't it?

Mr. FINNEY. I think he was one of the agents under Mr. Glavis.

Mr. BRANDEIS. You know perfectly well that it was testified to at the last hearing that this letter of the 22d followed the interview of

Mr. Glavis with Mr. Todd of April 11, and the interview of Mr. Glavis and Mr. Jones of April 21, as appears by the daily report.

Mr. FINNEY. This is certainly a letter transmitting to Mr. Todd certain affidavits.

Mr. BRANDEIS. Relating to this criminal matter?

Mr. FINNEY. Relating to this matter; but I do not know that the Attorney-General had that before him.

Mr. BRANDEIS. I am not asking you that. I am asking you whether that thing is not a step—a step in the investigation?

Mr. FINNEY. It is a step in the investigation by the special agent; yes, sir.

Mr. BRANDEIS. Now, I will call your attention to one of the letters which I called for before; it was referred to in Mr. Christensen's letter to Mr. Schwartz of February 8, which has just now been——

Mr. GRAHAM. Just there, Mr. Brandeis, let me interrupt you, if you please. Your last answer, Mr. Finney, was "a step in the investigation by the special agent." Do you mean Jones or Glavis by that answer?

Mr. FINNEY. Well, Jones was an agent in Glavis's division.

Mr. GRAHAM. And what he did is attributable to Glavis?

Mr. FINNEY. It presumably was under Glavis's direction.

Mr. GRAHAM. It is stronger than presumably, isn't it? You know he was under Glavis's direction and would not act independently of Glavis in a matter of that kind?

Mr. FINNEY. When Jones was put on the case originally, I believe he had direct authority from the land office, but my recollection was that Glavis was later put in charge of the Alaska coal cases, so that Jones was probably acting under his direction at this time. That is my understanding.

Mr. BRANDEIS. There is no question about that, is there?

Mr. FINNEY. I do not question it.

Mr. BRANDEIS. The daily reports of both Jones and Glavis, which were put in evidence here, and which were referred to at the last hearing——

Mr. FINNEY. I am not familiar with those reports. I presume they are——

Mr. BRANDEIS. Perhaps if I introduce this letter which has come up from the office, that may relieve all doubt in your mind:

PORTLAND, OREG., April 24, 1908.

Mr. HORACE TILLARD JONES,
Special Agent, G. L. O., Seattle, Wash.

SIR: I am in receipt of the carbon copy of your letter to the United States attorney recommending criminal prosecution in the Alaska cases. I note that you merely have in mind the securing of indictment for conspiracy. It was my idea that we could also indict them under amendment R. S. 4746. If the United States attorney and yourself deem it advisable to arrest Sweeney before action had by the grand jury, do so by all means. It, however, suggests itself to me that it would be quite impossible to have all preliminary hearings until the receipt of the original papers from Alaska.

Respectfully,

(Signed)

L. R. GLAVIS,
Chief Field Division.
J. P.

I offer that letter in evidence.

The CHAIRMAN. It is admitted.

Mr. BRANDEIS. There can be no question but what that is some step by Mr. Glavis in connection with these proceedings, can there?

Mr. FINNEY. It was a step by Mr. Glavis. I do not know what the Attorney-General would regard as a step. You are asking me about the Attorney-General—

Mr. BRANDEIS. No, I beg your pardon. I was asking you—

Mr. FINNEY. Do not all of your questions relate to his conclusion here? If they do, I must qualify my answer every time.

Mr. BRANDEIS. I am asking you, not for what the Attorney-General said, but for the facts as they now appear, or are being made to appear by the record, in the ordinary use of the English language.

Mr. FINNEY. As it now appears from papers which were printed in this record and now produced, it seems that Jones and Glavis were doing some work on these particular land cases. They had not, so far as I know, gotten to the grand jury.

Mr. BRANDEIS. You did not get to the grand jury in connection with Christensen's attempt and other attempts to indict Glavis, but you did a good deal there?

Mr. FINNEY. I did not do anything, and I do not know anything about it.

Mr. JAMES. The special agent could not take the witnesses before the grand jury, could he?

Mr. FINNEY. The matter of presentation before the grand jury would be handled by the district attorney, after the special agent had marshaled such facts and evidence and witnesses as were in the opinion of the attorney sufficient, we presume.

Mr. JAMES. And the attorney for the United States would have these witnesses subpoenaed and he himself examine them, I suppose, before the grand jury.

Mr. FINNEY. Possibly. My understanding is that the attorney was not satisfied to bring the matter to the grand jury, and directed Glavis to secure some further instructions, and that those were not secured.

Mr. GRAHAM. The real point there is whether the special agent of his own motion could bring a case before the grand jury without the consent of the district attorney or without submitting the case to him for his judgment.

Mr. FINNEY. Now, I would not like to answer your question positively. My impression is that he could not.

Mr. GRAHAM. As a matter of practice, he would not?

Mr. FINNEY. That is my understanding.

Mr. JAMES. As a matter of practice he really could not; isn't that true?

Mr. FINNEY. That is my understanding, Mr. James; but I am not familiar with the practice in the State of Washington, for instance.

Mr. BRANDEIS. Now, on page 2417 of the record is the letter of United States Attorney Todd to Horace Tillard Jones. That is a step taken by Mr. Todd, in this connection, and I now want to introduce the letter also which has just come from the General Land

Office, and was not before produced—the letter of Horace Tillard Jones in answer to Mr. Todd [reading]:

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Portland, Oreg., May 14, 1908.

ELMER E. TODD, Esq.,
United States Attorney, Seattle, Wash.

SIR: Referring to your communication of the 13th instant, in re the Alaska land fraud cases:

We have just received the original filing papers in this matter from Juneau, Alaska. I will be in Seattle on Saturday morning and will be in your office at about 11 o'clock to see you about this matter.

Very respectfully,

(Signed) HORACE TILLARD JONES,
Special Agent, G. L. O.

That letter of the 13th was the letter saying that the original papers were necessary, wasn't it?

MR. FINNEY. Yes; requesting Jones to secure the original coal declarations.

MR. BRANDEIS. Then, it has already appeared in evidence by the daily reports of Jones that on the 16th and 17th he was in Seattle and saw the Attorney-General. You recall that, do you not?

MR. FINNEY. I recall some evidence on that point. I do not recall the specific testimony.

MR. BRANDEIS. And under date of May 18 was the letter of Mr. Todd to Mr. Glavis, stating that this matter ought to be laid before the General Land Office and the Attorney-General. That was the letter that was put in evidence on page 836?

MR. FINNEY. Yes, sir.

MR. BRANDEIS. Then you recall also, do you not, the entry in the daily records of Jones of the conference with the United States attorney for the eastern district of Washington, on April 29?

MR. FINNEY. I remember Mr. Todd's testimony in regard to it.

MR. BRANDEIS. In reference to the Doughten group—the other group of criminal cases?

MR. FINNEY. I remember Mr. Todd's testimony to the effect that Jones visited his office on some occasions before that time.

MR. BRANDEIS. You remember also in that letter of Mr. Todd's of May 18 the reference to the fact that the matter was also taken up with the attorney for the eastern district, who had expressed the opinion that the matter ought to be referred to the General Land Office or the Attorney-General?

MR. FINNEY. No. The attorney for the eastern district spoke about the division of the district. The question arose as to whether it should be instituted in the old district by a special jury.

MR. BRANDEIS. Or the new district?

MR. FINNEY. Yes, sir.

MR. BRANDEIS. Then, there were also, as you recall the two letters about which there was considerable discussion—the letter of Glavis to the commissioner of June 8, on page 2424, and of June 10, which appears at page 2431, and which was said had never been sent—do you recall that?

MR. FINNEY. My recollection is that there were some letters alleged to have been written and never sent. Yes; I recall those.

Mr. BRANDEIS. That matter was not referred to the grand jury according to the evidence in the record—that is the fact, isn't it?

Mr. FINNEY. So far as I know, it never went to a grand jury.

Mr. BRANDEIS. But it is a fact, on the other hand, that a great many steps were taken in that investigation, with the view of a possible reference of that matter to the grand jury, is it not?

Mr. FINNEY. The evidence now before us shows that Glavis and Jones were engaged in quite a number of various investigations; yes, sir.

Mr. BRANDEIS. Well, now, do you know of any reason why these facts appearing by all these documents were not submitted to the President?

Mr. FINNEY. Yes; I think I do.

Mr. BRANDEIS. What is it?

Mr. FINNEY. A very good reason. In the first place, none of them, so far as I know, were in the Department of the Interior or the General Land Office, with the exception of the daily reports.

Mr. BRANDEIS. Those daily reports, if examined, would have shown it?

Mr. FINNEY. They would have shown a statement by these agents that on such a day they were engaged in certain work; but those reports were not filed with the cases; they are put in a special place in the General Land Office, as a rule, and would not be taken out and considered in connection with cases, because they are just a sort of a daily work report. If an agent makes a report of a specific matter it is on a separate form or statement. Of course, we can not undertake to take a simple daily report, which is brief and unverified, as to a cause of action against an individual claimant, so those reports are treated merely as the work report, to keep track of where the agents are and what they are doing.

Mr. JAMES. The charge against an official that he had by negligence failed to take certain action, and by reason of that negligence had allowed criminals to escape by allowing the statutes of limitation to run against their crimes, is that not such an offense charged against a public official that would warrant any one in making the most careful examination to see whether or not the facts were true?

Mr. FINNEY. I was just coming to that. Mr. Ballinger's letter to the President and Mr. Pierce's letter to the President had nothing whatever on this subject. They were engaged in answering the charges that Glavis had made against them. Mr. Dennett's letter does contain the statement which has been read here two or three different times, and which said that Glavis informed them in May, 1909, that the matter had not been submitted to the grand jury; but I do not understand that this was regarded, as I say, at this time as of any importance. These gentlemen were endeavoring to answer Glavis's charges against them.

Mr. JAMES. Still it is of importance—

Mr. FINNEY. And they knew nothing of Mr. Glavis's letter, so far as I know, to District Attorney Todd, or of his reply to Glavis, or of the fact that Glavis had prepared a letter to transmit, if he had prepared one. I certainly knew nothing of that, and I presume none of the others did.

Mr. GRAHAM. Of those who were in the General Land Office, who were in authority, what one would it be who should know about the contents of these daily reports?

Mr. FINNEY. The daily reports, when they come in, are sent directly into the division of which Mr. Schwartz is the head. He is the Chief of the Field Service, but whether he had time to read them or not I do not know.

Mr. GRAHAM. Mr. Schwartz did make a report, as shown by Senate Document 248, to the President, did he not?

Mr. FINNEY. So far as I can find from his letter, he does not touch upon that subject directly.

Mr. BRANDEIS. Now, as a matter of fact, why was that not done? You know perfectly well that in the Attorney-General's letter this statement that Glavis had taken no steps whatsoever in connection with these proceedings was one of only two statements in the conclusion of the Attorney-General, which was italicized—that is a fact, is it not?

Mr. FINNEY. That is italicized, yes sir; that is true, in this book here. I do not know about the original letter.

Mr. BRANDEIS. Why was not the trouble taken to investigate those daily reports, and why was not the trouble taken to telegraph to Seattle to ascertain whether there were any papers in the record which bore upon that matter?

Mr. FINNEY. That is a question I can not answer for the Attorney-General, Mr. Brandeis?

Mr. BRANDEIS. You saw that statement of the Attorney-General?

Mr. FINNEY. I saw it after it was printed in this document.

Mr. BRANDEIS. That is the first time you saw it?

Mr. FINNEY. That is the first time I ever saw the Attorney-General's statement or summary.

Mr. BRANDEIS. Others in your department saw it before it was printed in this document, did they not?

Mr. FINNEY. I can not tell you. They may have or they may not.

Mr. BRANDEIS. You have heard of another—

Mr. OLMSTED. Let me ask, right there, to whom was the Attorney-General's opinion addressed?

Mr. FINNEY. To the President.

Mr. BRANDEIS. But it is dated September 11, 1908, two days before the President's letter condemning and dismissing Glavis.

Mr. JAMES. You mean 1909.

Mr. BRANDEIS. I mean 1909. I beg your pardon.

Mr. OLMSTED. Was it filed in the Department of the Interior at all?

Mr. FINNEY. No, sir; I do not know that it was. I assumed it was not.

Senator ROOT. Has it ever been filed in the department?

Mr. FINNEY. It, so far as I know, has not been, except in the form of this printed document. We have some of those on file.

Mr. BRANDEIS. When did you first learn that the Attorney-General had made this report?

Mr. FINNEY. Some one in the department, it may have been Mr. Carr or Mr. Lawler, I do not remember which, told me that the President was having the matter reviewed by the Attorney-General; but, so far as I can recall, I was not advised as to just what shape his advice to the President took, whether it was oral or written. I know that he had taken some action, and then I knew that a short

time before this was printed that the matter had been transmitted to the President, but I did not know the form it was in.

Mr. BRANDEIS. When did you first hear that some one else in the Interior Department—Secretary Ballinger, Commissioner Dennett, Mr. Schwartz, Secretary Pierce, or anyone else—had seen the report of the Attorney-General?

Mr. FINNEY. I do not think that any one of them ever told me about reading it. Some one told me that he had made some sort of a report to the President.

Mr. BRANDEIS. Do you mean to say that they never told you that they had read it—any one of them?

Mr. FINNEY. No, sir; no one of them ever told me.

Mr. BRANDEIS. No one has ever mentioned that fact to you?

Mr. FINNEY. Some one of them told me that the Attorney-General had been asked to review the record, and he made a report, but they did not say they had read it. I supposed they had. I do not know whether they had read it or not.

Mr. BRANDEIS. Are you able to locate the person that made that statement to you?

Mr. FINNEY. I can not state positively; probably Mr. Carr or Mr. Lawler or some of the officers in the department.

Mr. BRANDEIS. And you can not locate the time, I suppose, with any definiteness or the occasion. Perhaps if I refer to the occasion it might aid you.

Mr. FINNEY. Well, I hesitate to say. My impression is it was after the President's letter was written to the Secretary that I first learned of it, but I am not absolutely certain about that.

Mr. BRANDEIS. Now, I want to refer to another passage in the Attorney-General's report, which appears on page 803 of the Senate document, as follows:

Except during a period of not exceeding two months (April and May, 1908), when proceedings were suspended owing to the exhaustion of the appropriation, Glavis had upward of two years in which to complete his investigations.

Now, Mr. Finney, is it not a fact that that statement of the Attorney-General, occupying three lines and one-half, contains in it three misstatements?

Mr. FINNEY. No; I do not think so. Perhaps you can point them out. I do not see them now.

Mr. BRANDEIS. Let me see. Take first this limitation, the exception of the two months: "Glavis had upward of two years in which to complete his investigations." Now, is it not a fact, Mr. Finney, that the first that Glavis had to do with this investigation, when it was committed to him, was the end of December, 1907?

Mr. FINNEY. He claims that he was given control of all the Alaska cases, including the Cunningham cases, in December, 1907.

Mr. BRANDEIS. And he was in Washington after the middle of December—I mean he left Washington on the 19th of December?

Mr. FINNEY. I think he so stated. I do not know about that personally.

Mr. BRANDEIS. And the letter confirming his authorization to investigate these cases was dated the 28th of December, 1907?

Mr. FINNEY. I believe that is correct.

Mr. BRANDEIS. Now, Sheridan was put in charge of these cases, superseding Glavis, on the 17th day of July, 1909, was he not?

Mr. FINNEY. I think that was the date he was ordered there.

Mr. BRANDEIS. It so appears to be the record evidence. Now, from the latter part of December until the 17th of July is one year and seven months at the most, is it not?

Mr. FINNEY. I think that is about right.

Mr. BRANDEIS. Then that statement of the Attorney-General that he had upward of two years is erroneous, is it not?

Mr. FINNEY. If the word "upward" is used there as meaning more than two years.

Mr. BRANDEIS. Well, is there any other meaning to the word "upward" that you know of?

Mr. FINNEY. I do not know what he had in mind when he wrote that. He may have meant nearly two years.

Mr. BRANDEIS. Do you think he meant nearly two years?

Mr. FINNEY. I do not know what he meant.

Mr. BRANDEIS. If he said nearly two years it would not have been true, would it?

Mr. FINNEY. Yes, sir.

Mr. BRANDEIS. Is one year and seven months nearly two years?

Mr. FINNEY. Speaking loosely; yes, sir.

Mr. BRANDEIS. Do you wish this committee to believe that you believe that he meant by using the words "upward of two years" nearly two years?

Mr. FINNEY. I think he meant approximately two years; yes, sir—about two years.

Mr. BRANDEIS. Do you not think it would have been a little nearer for him to have said one year and seven months?

Mr. FINNEY. He may have figured out the months, days, and years, but I do not suppose he stopped to do that.

Mr. BRANDEIS. He evidently did not.

Mr. JAMES. He leaves out April and May in that computation?

Mr. BRANDEIS. Yes, sir. Now, secondly, is he not in error on the other side in excepting the month of April; or, in other words, was it not the month of May, and on the 2d of May, that Glavis was ordered to suspend his investigation. You remember the telegram of Dennett to him of May 2?

Mr. FINNEY. It was a telegram or letter telling him that the appropriation was low or exhausted—yes, I think it was the 2d of May.

Mr. BRANDEIS. It appears in the List on page 9.

Mr. FINNEY. Yes, sir.

Mr. BRANDEIS. That is the second error, is it not?

Mr. FINNEY. I have a recollection of something being written in April; I am not sure about that.

Mr. BRANDEIS. Was not a letter written in April, dated the 28th, telling him that appropriation was going to run out, and that letter could not have reached him until the month of May, and, as a matter of fact, could not have reached him until after the telegram?

Mr. FINNEY. That could not have reached Seattle until May.

Mr. BRANDEIS. Consequently, to omit the month of April it was erroneous to except that, was it not?

Mr. FINNEY. It would so appear, if that is so.

Mr. BRANDEIS. I do not think there is any question about that, Mr. Finney; but let us come now to the third error, which is one of more importance. There is in that sentence, is there not, a statement

which is in accordance with the contention which has been made by Mr. Vertrees throughout, and also the statement made by the Attorney-General, that the ground of the suspension was the exhaustion of the appropriation, and that there was no other reason for him having suspended the investigation—that is what it means, is it not?

Mr. FINNEY. This paragraph says it was owing to the exhaustion of the appropriation.

Mr. BRANDEIS. Now, you know, Mr. Finney, as a matter of fact that that is not so, do you not?

Mr. FINNEY. No; I do not know that.

Mr. BRANDEIS. Do you not know that there was another reason for that, and have you not so stated?

Mr. FINNEY. There may have been the reason in the fact that this coal act was pending.

Mr. BRANDEIS. Now, instead of "there may have been" a reason, do you not know that that was the reason, and have you not so stated that it was the reason?

Mr. FINNEY. I do not recall whether I have so stated or not.

Mr. BRANDEIS. Let us see. Turn to that record, which has been referred to, of the hearing of the Alaska claimants on March 9, 1909, which appears in the list at page 162, in which the following appears:

Mr. PIERCE. These entries were suspended on the charge of fraud?

Mr. FINNEY. These thirty-odd; yes.

Mr. PIERCE. Mr. Finney, how long ago was that—the suspension?

Mr. FINNEY. It was in the latter part of 1906, I think, or the early part of 1907.

Mr. PIERCE. Why have they not been cleared?

Mr. FINNEY. For two reasons. They have been under investigation by the field force of the Land Office, and, of course, in Alaska it takes some time to investigate and report. Second, we thought possibly these people might desire to come in under the act passed a year ago (act of May 28, 1908). The attorneys here in Washington rather insisted at the time we were drawing the regulations under the last act that they be given an opportunity to consider the matter and determine whether they would try to come in under the provisions of the last act or would take their chances under the original act of 1904.

Now, Mr. Finney, is not that statement made by you true?

Mr. FINNEY. That statement is true, but it does not in the slightest, as I read it, support your assertion that that had anything to do with the suspension of the Glavis investigation during that time.

Mr. BRANDEIS. Not the original suspension of May 2, which was on account of lack of appropriation and the urgency of the Oregon matters, but has it not to do, and is it not the real reason why, after the appropriations were adequately provided, this matter was held in abeyance until the letter of October 7, 1908?

Mr. FINNEY. That is not my understanding. It would not have been necessary to defer the investigation. The agent could have gotten his facts, and when these people attempted to come in under one act or the other he could have applied the facts.

Mr. BRANDEIS. Then is that statement which you make there as to why the matter was suspended untrue?

Mr. FINNEY. No, sir; I am not talking about the Glavis investigation being suspended. Mr. Pierce asks "Why have not the entries been cleared?"—meaning, I suppose, passed to patent. I say, "For two reasons. They have been under investigation by the field force of the Land Office," and the inference from that is that the investi-

Mr. FINNEY. I knew they were attorneys for the railroad, because I had——

Mr. BRANDEIS. You mean by that, the Copper River Railroad, which belongs to the Alaska syndicate?

Mr. FINNEY. Yes, sir.

Mr. BRANDEIS. And they have acted also in other matters for the Alaska syndicate?

Mr. FINNEY. It may be; I do not know as to that.

Mr. BRANDEIS. Now, this request which Burdette, Thompson & Law made on behalf of the owners of the Cunningham claims was in substance this, was it not, that they should have the right, first, to try and come in under the act of 1904?

Mr. FINNEY. Yes, sir.

Mr. BRANDEIS. And if they failed in that, they should have a year later—another year—in which to make a trial under the act of 1908?

Mr. FINNEY. That was their proposition; yes, sir.

Mr. BRANDEIS. And that is a proposition which you advised against?

Mr. FINNEY. I did.

Mr. BRANDEIS. Will you read to the committee the advice that you gave on that subject? It is on page 652 of Senate Document 248.

Mr. FINNEY (reading):

With reference to pending entries, I have not adopted the first proviso suggested in the draft submitted by Messrs. Burdette, Thompson & Law. There are only 33 pending entries, and they are under investigation, it being charged that they were not made for the use and benefit of the entrymen as required by law, but in the interest of other persons or corporations. The purpose of the proposed proviso is to require the Government not only to pursue its charges by investigation, but to incur the expense of hearings, finally adjudicate the cases, and then, if it be proven that the entries were made in violation of law and can not be allowed to stand, to accord these persons twelve months from that date within which to apply to enter under the new act. I submit that this is an unreasonable request, and that these entrymen should forthwith elect to either stand on the entries as made under the act of 1904 or within a reasonable time consolidate under the act of 1908. If they are absolutely sure that the entries were made in accordance with the act of 1904, and they do not desire to come in under the provisions of the latter act, they should be in a position now to elect to abide by the result of the Government's investigation. On the other hand, if they entertain fears as to its result and think that the act of 1908 would permit them to consolidate their claims and obtain patents, they should proceed under that act. The regulation is, therefore, drawn so as to require them to make this election within twelve months from the date of circular.

Mr. BRANDEIS. Now, I ask you, Mr. Finney, whether it is not a fact that when the department, in accordance with the advice which you gave them, refused to permit the Cunningham claimants to first try under the act of 1904, and then if they failed under that to make another trial under the act of 1908, the counsel representing them wanted time to consider what they ought to do, and that during that time it was deemed advisable to suspend this investigation into their claims?

Mr. FINNEY. I do not recall any such proposition as that. This memorandum I made is dated June 25. The proposed regulations had to be submitted to Mr. Garfield out west, and they were approved on July 11, so you see they could not——

Mr. BRANDEIS. But I say after they were approved and the right was denied and the claim which these Cunningham claimants made was denied them by the regulations, that then the counsel, whose

Mr. BRANDEIS. Mr. Chairman, I desire to read that to the committee and to introduce that letter in evidence. It is as follows:

BURDETT, THOMPSON & LAW,
ATTORNEYS AND COUNSELORS AT LAW,
Washington, D. C., June 24, 1908.

HON. FRANK PIERCE,
Assistant Secretary of the Interior.

DEAR SIR: Complying with your request of yesterday at the hearing on coal-land regulations for Alaska to carry out the provisions of the act of Congress approved May 28, 1908, we beg to submit one paragraph in lieu of the closing paragraph on page 2 of the regulations as prepared by the General Land Office relating to "pending entries."

The draft proposed by us is as follows:

"Claims embraced in existing unpatented entries, if the entrymen shall elect so to do, may be consolidated and the entries transmuted into a single entry, as authorized by the provisions of this act, within twelve months from date hereof: *Provided*, That in all cases of suspended entries made under the act of April twenty-eighth, nineteen hundred and four, such application to transmute into a consolidated entry under this act may be made within twelve months from the date of final adjudication by the Land Department against the right to a patent under said act of nineteen hundred and four of any of the entries embraced in such consolidated application: *And provided further*, That in such consolidated entries no further payment of the purchase price of the land, or any further publication of notice to make such consolidated entry, or any new or additional survey of the claims embraced in such consolidated entry shall be required; but the application for consolidated entry shall be accompanied by a plat of the claims as consolidated, and by proof showing the qualifications of the applicants."

Other counsel participating in the hearing of yesterday, we understand, will submit draft of proposed regulations covering other features of the general subject.

Very respectfully,

BURDETT, THOMPSON & LAW.

Now, Mr. Finney, is it not a fact that the only pending entries at that time were the 33 Cunningham entries?

Mr. FINNEY. That is my understanding.

Mr. BRANDEIS. And you had some doubt on that fact the other day; but you have, I suppose, resolved that doubt, have you not? You expressed a doubt at page 3119.

Mr. FINNEY. Where I refer to Mr. Garfield's report?

Mr. BRANDEIS. Yes; and I suppose you have since referred to this matter.

Mr. FINNEY. I have been unable to find any other entries of record in the docket. It is possible that some payments had been made which I counted as entries. I do not know.

Mr. BRANDEIS. There is no other entry; it so appears in the statement which you prepared for Mr. Garfield, and which he gave to the congressional committee on March 6, 1908, which appears on page 114 of the list.

Mr. FINNEY. Yes, sir.

Mr. BRANDEIS. Now, the only persons, therefore, who were at all interested in the regulations concerning pending entries were the Cunninghams, or those who had become interested through the Cunninghams. That is a fact, is it not?

Mr. FINNEY. That would appear so; yes, sir; as there were no other entries pending.

Mr. BRANDEIS. And Burdette, Thompson & Law represented those claimants, did they not?

Mr. FINNEY. So they state; yes, sir.

Mr. BRANDEIS. Now, as a matter of fact, do you not know that Burdette, Thompson & Law are the counsel who act for the Alaska syndicate in reference to land office matters?

Mr. FINNEY. I knew they were attorneys for the railroad, because I had—

Mr. BRANDEIS. You mean by that, the Copper River Railroad, which belongs to the Alaska syndicate?

Mr. FINNEY. Yes, sir.

Mr. BRANDEIS. And they have acted also in other matters for the Alaska syndicate?

Mr. FINNEY. It may be; I do not know as to that.

Mr. BRANDEIS. Now, this request which Burdette, Thompson & Law made on behalf of the owners of the Cunningham claims was in substance this, was it not, that they should have the right, first, to try and come in under the act of 1904?

Mr. FINNEY. Yes, sir.

Mr. BRANDEIS. And if they failed in that, they should have a year later—another year—in which to make a trial under the act of 1908?

Mr. FINNEY. That was their proposition; yes, sir.

Mr. BRANDEIS. And that is a proposition which you advised against?

Mr. FINNEY. I did.

Mr. BRANDEIS. Will you read to the committee the advice that you gave on that subject? It is on page 652 of Senate Document 348.

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Mr. BRANDEIS. Now, I ask you, Mr. Finney, whether it is not a fact that when the department, in accordance with the advice which you gave them, refused to permit the Cunningham claimants to first try under the act of 1904, and then if they failed under that to make another trial under the act of 1908, the counsel representing them wanted time to consider what they ought to do, and that during that time it was deemed advisable to suspend this investigation into their claims?

Mr. FINNEY. I do not recall any such proposition as that. This memorandum I made is dated June 25. The proposed regulations had to be submitted to Mr. Garfield out west, and they were approved on July 11, so you see they could not—

Mr. BRANDEIS. But I say after they were approved and the right was denied and the claim which these Cunningham claimants made was denied them by the regulations, that then the counsel, whose

application had been denied and who represented these claimants. wanted time within which to consider what to do, and before the Government should begin any proceedings to cancel the claims. You say you have no recollection of that fact?

Mr. FINNEY. I do not recall it; no, sir.

Mr. BRANDEIS. Let me see if I can not recall this to you. Do you not recall that Mr. Ballinger, then being retained as counsel for the Cunninghams and aiding them in drawing up this September 4 affidavit of Clarence Cunningham, proceeded with that affidavit to Mr. Garfield, came on to Washington and saw Mr. Dennett, and getting Mr. Garfield's refusal, went back and stated to his clients that they could not get the patent under the act of 1904, and that unless they made the application under the law of 1908 they were in danger of proceedings to cancel their claims?

Mr. FINNEY. I know in Mr. Ballinger's letter to the President he stated that he presented this affidavit to Mr. Garfield, and that Mr. Garfield and Mr. Dennett both told them that they might have their patents under the act of 1908, but could not have it under the act of 1904, but I do not know personally about these transactions you have been relating. I do not know whether Mr. Ballinger was ever attorney for the Cunninghams.

Mr. BRANDEIS. But do you not know further that Mr. Ballinger said, as appears in his answer on page 69 of Senate Document 248:

I further said to them that they were likely to be cited to show cause why their claims should not be canceled unless they brought themselves under that statute—

namely, the statute of 1908?

Mr. FINNEY. Yes; he said that, and that was very natural. He knew, I should presume, that the investigation was proceeding.

Mr. BRANDEIS. Do you not know this further fact, that when Mr. Ballinger saw Mr. Dennett in September, and stated to him that he did not believe the Cunningham claimants would make application under the act of 1908, stated to him informally, that it was that fact which induced Mr. Schwartz to give the instructions to Glavis to resume the investigation which had been suspended since the 2d of May?

Mr. FINNEY. No, sir. I do not know that he ever made such a statement to Dennett, and I do not know that it moved Schwartz.

Mr. BRANDEIS. Will you now turn to the following data of Mr. Schwartz, the following statement of Mr. Schwartz—I refer first to Senate document, page 501; it also appears in the list at page 139. It is the same statement in which he embodies his criticism of the affidavit of September 4 which Mr. Ballinger had presented to Mr. Garfield:

I am still of the opinion that these claims were fraudulent, and that the orders issued to Chief of Field Division Glavis at the time the Alaska coal bill was pending in Congress to temporarily suspend his investigations should now be revoked, and he should be directed to proceed with a view to establishing, by the necessary evidence, the complete facts in relation to the Cunningham and Guggenheim claims.

Do you recall that?

Mr. FINNEY. I see that statement; yes, sir.

Mr. BRANDEIS. Now, you recall also the statement in the letter of October 7, 1908, which appears in Senate Document 248, at page 503 and in the list at page 141:

Your investigation of these coal entries was temporarily deferred during the pendency in the last Congress of a bill to provide additional laws for acquiring title to Alaska coal lands. Since that time the condition of business in your district has been such that no further investigation has been had of these particular entries.

Mr. FINNEY. Well, he seems at this time to have had in mind the letter of June 3, 1908, according to my construction of this letter.

Mr. BRANDEIS. Will you turn to Mr. Schwartz's memorandum of April 16, which appears on page 510 of Senate Document 248 and on page 189 of the list. He there says:

Subsequently the coal investigations in Alaska were temporarily suspended, pending a determination of what procedure might be had in view of the coal-land legislation of May 28, 1908, which was intended to permit the consolidation of claims in Alaska.

Do you see that?

Mr. FINNEY. I see that; yes, sir.

Mr. BRANDEIS. Now, will you please turn to the memorandum of Mr. Schwartz of July 19, 1909, on page 247 of the list——

The **CHAIRMAN.** Evidently we can not get through right away, and so the committee will take a recess until 2 o'clock.

(Thereupon, at 12 o'clock and 45 minutes p. m., the committee took a recess until 2 o'clock p. m.)

AFTER RECESS.

The committee reassembled after recess at 2 p. m.

The **CHAIRMAN.** The committee will please come to order and we will proceed with the case.

TESTIMONY OF EDWARD C. FINNEY—Resumed.

Mr. BRANDEIS. Mr. Stenographer, will you please read the beginning of the question?

(The reporter read the question, as follows:)

Mr. BRANDEIS. Now, will you turn to the memorandum of Mr. Schwartz of July 19, 1909, at page 247 of the list——

Mr. BRANDEIS. In the letter of Mr. Schwartz, or the memorandum of Mr. Schwartz to Murphy, the paragraph:

You will recall that for a short time pending consideration of the scope and extent of the new coal-land act in Alaska, Glavis was directed to suspend his inquiries and devote his time to other important Oregon cases.

Then I call your attention finally to the passage in Mr. Schwartz's letter to the President of September 1, 1909, at page 229——

Mr. MADISON. Of what?

Mr. BRANDEIS. Of the Senate document. The middle of the page.

The pendency and passage of the act of May 28, 1908, and the formation of regulations thereunder, contributed somewhat to the delay in issuing specific instructions to Mr. Glavis. There was a variety of opinion and serious disagreement between officers of the Interior Department as to the construction of the law, which made the task of preparing regulations one of no little difficulty.

Now, is it not a fact, Mr. Finney, that the last three quotations from Mr. Schwartz, namely, in his memorandum of April 19, 1909, one of July, 1909, and from his letter to the President of September 1, 1909, were not referred to in any way by the Attorney-General in his summary and report to the President?

Mr. FINNEY. That is a question I can not answer.

Mr. BRANDEIS. Let me see whether you can answer this question, turning from that for a moment. Is it not a fact that in referring to the memorandum of September 23, 1908, Schwartz's memorandum quoted above, the Attorney-General made an erroneous statement to the effect, on page 767—

Mr. Schwartz was evidently not informed that on May 28, 1908, Commissioner Dennett, by the telegram above quoted, rescinded the suspension and instructed Glavis to push the work.

Now, do you not know that that statement of the Attorney-General is erroneous?

Mr. FINNEY. No, sir; I do not know. I think it is correct. Because that was followed by the letter of June 3, 1908, which inclosed a copy of the act and told Glavis to modify the scope of his investigations accordingly.

Mr. BRANDEIS. Do you not know that the telegram of May 28, and the letter of June 3, 1908, both bore the initials of Mr. Schwartz and were prepared by him for Mr. Dennett's signature?

Mr. FINNEY. I have a copy of the letter of June 3 before me, and that bears Schwartz's initials.

Mr. BRANDEIS. That shows then, therefore, that on June 3 Mr. Schwartz knew. Now turn to the telegram of the 28th of May.

Mr. FINNEY. I do not find it here. Will you give me a reference to it?

Mr. BRANDEIS. I do not know that I have the reference at hand. I have a copy of the telegram furnished in response to my own call, furnished by the Interior Department.

Mr. FINNEY. This copy contains his initials.

(The telegram is as follows:)

H. H. S.

H. H. S.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, May 28, 1908.

Address only the Commissioner of the General Land Office.

[Telegram.]

Special Agent L. R. GLAVIS,

Portland, Oregon.

Persite babir lemamaca released. Bill signed carrying migmultmura for field work, half immediately available. Limitation of office letter Laprimafno revoked. Push work.

DENNETT, Commissioner.

W. U.
O. B. G. R.
Chg. G. L. O.
GVF

[Translation.]

Secretary of Interior letter May 12 released. Bill signed carrying \$500,000 for field work, half immediately available. Limitation of office letter April 28 revoked. Push work.

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Mr. FINNEY. That is a question I can not answer.

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Now, do you not know that that statement of the Attorney-General is erroneous?

Mr. FINNEY. No, sir; I do not know. I think it is correct. Because that was followed by the letter of June 3, 1908, which inclosed a copy of the act and told Glavis to modify the scope of his investigations accordingly.

Mr. BRANDEIS. Do you not know that the telegram of May 28, and the letter of June 3, 1908, both bore the initials of Mr. Schwartz and were prepared by him for Mr. Dennett's signature?

Mr. FINNEY. I have a copy of the letter of June 3 before me, and that bears Schwartz's initials.

Mr. BRANDEIS. That shows then, therefore, that on June 3 Mr. Schwartz knew. Now turn to the telegram of the 28th of May.

Mr. FINNEY. I do not find it here. Will you give me a reference to it?

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Mr. FINNEY. This copy contains his initials.

(The telegram is as follows:)

H. H. S.

H. H. S
DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, May 28, 1908.

Address only the Commissioner of the General Land Office.

[Telegram.]

Special Agent L. R. GLAVIS,

Portland, Oregon.

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GVF

[Translation.]

Secretary of Interior letter May 12 released. Bill signed carrying \$500,000 for field work, half immediately available. Limitation of office letter April 28 revoked. Push work.

Mr. BRANDEIS. Well, does not that show that Mr. Schwartz did know that telegram?

Mr. FINNEY. That shows that Mr. Schwartz had something to do with the writing of the letter and of that telegram.

Mr. BRANDEIS. Consequently, it shows, does it not, that the Attorney-General's statement is absolutely unfounded?

Mr. FINNEY. No.

Mr. BRANDEIS. Why does it not?

Mr. FINNEY. He might have used the term "not informed" as meaning at the time that Mr. Schwartz wrote this note of September 23, he might have forgotten having initialed these letters.

Mr. BRANDEIS. But he explains away the fact that Mr. Schwartz wrote that note, by saying he wrote it under a misapprehension. Does not this telegram bearing Schwartz's initials show that he knew of that telegram?

Mr. FINNEY. Evidently it looks as though he had written the telegram.

Mr. BRANDEIS. Yes; it looks also as if he had written this letter of June 3.

Mr. FINNEY. Yes, sir; that bears Schwartz's initials.

Mr. BRANDEIS. Yes; and as they both bear Schwartz's initials, they show, do they not, that the Attorney-General was in error when he said: "Evidently Mr. Schwartz was not informed that Commissioner Dennett had sent the telegram?"

Mr. FINNEY. Yes, sir; if this is to be construed as meaning that Mr. Schwartz never knew anything about that telegram and letter.

Mr. BRANDEIS. Well?

Mr. FINNEY. If it is to be construed that it was not in his mind when he wrote that September 23 letter, the Attorney-General is not.

Mr. BRANDEIS. Is there any basis whatsoever for the statement of the Attorney-General there that evidently Mr. Schwartz was not informed? Or, in other words, would it not have been more correct for him to say, evidently Mr. Schwartz was fully informed, because he prepared and initialed both the telegram of May 28 and the letter of June 3?

Mr. FINNEY. No; because he had quoted from Schwartz's letter of September 23, wherein he says, "temporary suspensions should now be revoked." Now, the fact was that that had been revoked long before.

Mr. BRANDEIS. Where had it been revoked?

Mr. FINNEY. In the telegram, and in the letter of June 3, 1908.

Mr. BRANDEIS. Well, but this telegram and letter is not a revocation at all, is it?

Mr. FINNEY. The letter is, certainly.

Mr. BRANDEIS. It is not a revocation of anything in regard to this investigation he was making.

Mr. FINNEY. Why, yes, sir; the letter tells him that the act was passed and to modify his investigations accordingly. The telegram says: "Push work; money all available."

Mr. BRANDEIS. What work?

Mr. FINNEY. The work in his division.

Mr. BRANDEIS. But not the Alaska work.

Mr. FINNEY. Certainly, the letter does. The letter refers to the Alaska law, and he was sent a copy of it.

Mr. BRANDEIS. Let me put it this way: Have I not read to you and do you not recall five distinct statements of Mr. Schwartz to the effect, at least four of them to the effect, that the reason for the suspension of this investigation was the passage of the act of 1908 and the desire to give time to determine what ought to be done?

Mr. FINNEY. I will—

Mr. BRANDEIS. Now, wait a moment. Is not that the first thing—is not that the fact?

Mr. FINNEY. I have to answer that "no," and explain to you.

Mr. BRANDEIS. Well, let us have your explanation, if you think you have to answer it "no."

Mr. FINNEY. In his letter of July 19 he says:

You will recall that for a short time pending the consideration and scope of the new coal-land law in Alaska Glavis was directed to extend his inquiries and to devote his time to other important Oregon cases—

Mr. BRANDEIS. I said four or five. That is one of the five. Now, will you turn to the other four which I was asking you about, September 23, you have before you. That is a clear statement, is it not, for the reason of the suspension?

Mr. FINNEY. That is June; not September.

Mr. BRANDEIS. September 23—the memorandum here I am talking about of September 23, 1908.

Mr. FINNEY. Yes; it appears on September 23, and Schwartz expresses the opinion that the suspension should be revoked.

Mr. BRANDEIS. Yes, but wait—

Mr. FINNEY. Prior to that time the superior officer of both Schwartz and Dennett had revoked it, according to my view.

Mr. BRANDEIS. Where had he revoked the order in regard to the investigation of these claims for frauds?

Mr. FINNEY. In the letter of June 3, 1908.

Mr. BRANDEIS. Does he say anything there that he should resume—

The CHAIRMAN. Read the letter.

Mr. FINNEY. It is a letter written June 3, 1908, addressed to L. R. Glavis, chief of field division, Portland, Oreg. It is as follows:

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., June 3, 1908.

Mr. L. R. GLAVIS,
Chief of Field Division, Portland, Oregon.

SIR: There is hereto attached copy of an act, approved May 28, 1908 (S. 6805), "To encourage the development of coal deposits in the Territory of Alaska."

You will therefore so modify the scope of your investigations and subsequent reports in reference to Alaska coal lands as is made necessary by the terms and provisions of the foregoing bill.

The General Land Office and the department appreciates the very thorough and efficient manner in which you conducted your investigation in reference to the real situation in the Alaska coal matters. It was largely by your report of facts that this office was enabled to prove by the record what are the necessities of the Alaska coal fields and what were the various efforts to unlawfully acquire title to such lands.

Very respectfully,

FRED DENNETT, *Commissioner*.

The CHAIRMAN. What is the date of that letter?

Mr. FINNEY. June 3, 1908.

Mr. BRANDEIS. Now, I ask you this, Mr. Finney: Is not all that this letter of June 3 does is to tell him to modify his scope in view of

the changed conditions? It does not tell him to go ahead. It tells him that now your instructions as to the scope have got to be changed in view of a change in legislation which requires different inquiries, perhaps, from inquiries that you had to make under the act of 1904. Is not that the fact?

Mr. FINNEY. Mr. Schwartz had stated several times that one of the reasons for the suspension was the pendency of the act. This told Mr. Glavis that the act had passed and sent him a copy of it and told him to modify his investigations accordingly.

Mr. BRANDEIS. What is that expression you used—Schwartz had said several times?

Mr. FINNEY. He stated so in these communications I have been reading.

Mr. BRANDEIS. Yes; but was not every statement of Mr. Schwartz—the five statements which were read to you—were not each one of those five statements subsequent to the date of this letter? Now look and see.

Mr. FINNEY. Yes; the first one after this letter, I find, was July 19, where he says "that for a short time pending consideration"—

Mr. BRANDEIS. July 19 of what?

Mr. FINNEY. July 19, 1909.

Mr. BRANDEIS. That is not the first in order; the first in order after that is the letter of September 23, 1908.

Mr. FINNEY. What page is that, please?

Mr. BRANDEIS. It is in Senate document, page 501, a little over three months, three months and a half, after the letter of June 3, 1908?

Mr. FINNEY. Yes, sir.

Mr. BRANDEIS. And the second in order is the letter of October 7, 1908, which is four months after, is it not?

Mr. FINNEY. That is four months; yes, sir.

Mr. BRANDEIS. And the third is April 19, 1909, which is a year and nine months after?

Mr. FINNEY. I do not find that. Give me the page, please.

Mr. BRANDEIS. Page 510 of the Senate document. And the fourth is July 19, 1909, which you will find at page 527 of Senate document.

Mr. FINNEY. Yes, sir.

Mr. BRANDEIS. That is two years and one month and a half after?

Mr. FINNEY. Yes, sir.

Mr. BRANDEIS. And the final one is in the letter to the President of September 1, 1909, which is two years and three months after, is it not?

Mr. FINNEY. That is correct, I think.

Mr. BRANDEIS. I will ask you whether, in view of these facts stated by Mr. Schwartz and the fact that Mr. Schwartz presumably drafted and certainly initialed both the telegram of May 28, 1908, and the letter of June 3, 1908, the Attorney-General is clearly in error when he says, on page 767:

Mr. Schwartz was evidently not informed that on May 28, 1908, Commissioner Dennett, by the telegram above quoted, rescinded the suspension and instructed Glavis to push the work.

Mr. FINNEY. That is an inference which the Attorney-General drew and which seemed to me is warranted, because——

Mr. BRANDEIS. Just look here, Mr.——

The CHAIRMAN. Let him answer. Now, because what, Mr. Finney?

Mr. FINNEY. Because Mr. Dennett, who was the chief of both Glavis and Schwartz, had written this letter of June 3, 1908. In May, 1908, he told Mr. Glavis that the appropriation had been made available and that there was money to push the work generally, not only the Alaska work, but the work generally. He did mention the Alaska work in that telegram, but that was one of the reasons for suspension, and another was the pending consideration of this act. Now, on May 28 he was notified that the money was available, and on June 3 he was notified that the act had passed, was furnished a copy of it, and directed to modify his investigations accordingly.

Mr. BRANDEIS. Now, Mr. Finney, if I am right—beg your pardon if I interrupted you.

Mr. FINNEY. Now, if Mr. Schwartz meant to say, as he appears to in one or two of these letters, that that investigation was suspended not only after June 3 but up to October 7, 1908, I think Mr. Schwartz is mistaken.

Mr. BRANDEIS. Now, will you please pay attention to my question. I think you have not been doing it or you would not have answered as you did. The question I asked you is whether in view of this telegram of May 28, 1908, which reads as follows:

Secretary of Interior letter May 12 released. Bill signed carrying \$500,000 for field work; half immediately available. Limitation of office letter April 28 revoked. Push work.

and which you say was presumably written by Mr. Schwartz and which certainly is initialed by Mr. Schwartz, whether it is not obvious that the Attorney-General erred when he said that Mr. Schwartz was not informed of the telegram which he himself had initialed—that is all that I asked you.

Mr. FINNEY. Mr. Schwartz certainly knew of both telegram and the letter, inasmuch as he initialed them.

Mr. BRANDEIS. If Mr. Schwartz certainly knew of them, is not the following statement of the Attorney-General certainly incorrect:

Mr. Schwartz was evidently not informed that on May 28, 1908, Commissioner Dennett by the telegram above quoted rescinded the suspension and instructed Glavis to push the work.

Mr. FINNEY. Yes; that is an inference drawn from a quotation from Schwartz's report just above, and the natural inference from that would be that Schwartz was not informed.

Mr. BRANDEIS. I beg your pardon——

Mr. FINNEY. But the facts were Schwartz had initialed both papers.

Mr. BRANDEIS. Is not the inference from that telegram—he says he was not informed that on May 28 Commissioner Dennett had telegraphed—here is the telegram, is it not?

Mr. FINNEY. That is the telegram, but the inference is drawn from this communication of September 23, 1908, which the Attorney-General quotes. He says Schwartz evidently was not informed of that telegram, or he would not have made the statement he did in the letter of September 23.

Mr. BRANDEIS. Is it not certain that Schwartz knew then what that telegram stated—

Mr. FINNEY. He most certainly should have known.

Mr. BRANDEIS. He did know, did he not?

Mr. FINNEY. I think at that time he did.

Mr. BRANDEIS. He knew more about it than the Attorney-General did, presumably.

Mr. FINNEY. I think that at that time he did.

Mr. BRANDEIS. He knew what the telegram meant, did he not, presumably, better than the Attorney-General?

Mr. FINNEY. I think he knew what it meant.

Mr. BRANDEIS. The telegram speaks for itself, does it not?

Mr. FINNEY. Yes, sir.

Mr. BRANDEIS. And it speaks for itself in that it was initialed by him?

Mr. FINNEY. Yes, sir.

Mr. BRANDEIS. Now, Mr. Finney, passing from that for a moment, I called your attention a little while ago to the fact that you had stated in answer to Mr. Pierce, to Secretary Pierce's request for information of March 9, 1909:

Second, we think possibly these people might desire—

As to the reasons for suspension—

that these people might desire to come in under the act passed a year ago, the act of May 28, 1903. The attorneys here in Washington rather insisted at the time that if we were drawing the regulations in the last act that they be given an opportunity to consider the matter and determine whether they would try to get in under the provisions of the last act, or would take their chances under the original act of 1904.

Now, is it not a fact that nowhere in the Attorney-General's summary and report is there any mention of the fact of the evidence there appearing in this statement in regard to the suspension?

Mr. FINNEY. I do not recall of it being mentioned in the Attorney-General's summary.

Mr. BRANDEIS. Now, I call your attention also to this letter of Burdette, Thompson & Law, which appears on page 651 of the Senate document, as counsel for the Cunningham claimants, asking for a change in the regulation by which they were to have a year's time, after trying it out under the act of 1904 unsuccessfully, to then come in under the act of 1908. Is it not a fact that nowhere in the Attorney-General's summary and report of the evidence is any reference to be found to that letter of the Cunningham attorneys?

Mr. FINNEY. I do not know of any reference to it. I do not know why it should have. I do not think that is material.

Mr. BRANDEIS. There is not any there, is there?

Mr. FINNEY. None there I know of; no, sir.

Mr. BRANDEIS. And there is not any there of your comment on that which appears on page 652?

Mr. FINNEY. So far as I recall, it does not mention that.

Mr. BRANDEIS. Is there anywhere in the report of the Attorney-General any reference to the fact that Mr. Ballinger when he got back in the fall told his clients, the Cunningham claimants, that they could not get any patent under the act of 1904, and it is likely that unless

they got in promptly under the act of 1908 proceedings will be taken——

Mr. FINNEY. I do not know that they were——

Mr. BRANDEIS. That proceedings would be taken to cancel them?

Mr. FINNEY. I do not know that the Cunninghams were Mr. Ballinger's clients.

Mr. BRANDEIS. Well, does he not state that? I think it is at page 69.

Mr. FINNEY. Mr. Ballinger relates the circumstances of his trip to Ohio carrying the so-called Cunningham affidavits to Secretary Garfield.

Mr. BRANDEIS. And he also states that he acted as counsel for them in doing it, does he not? I refer to the passage on page 69:

And I further said to them that they were likely to be cited to show cause why their claims should not be canceled unless they brought themselves under that statute.

Mr. FINNEY. Yes, sir; he based that on the advice that Mr. Garfield and Mr. Dennett gave him, he says.

Mr. BRANDEIS. Yes; but that fact that they were then considering that question was one of the reasons why Glavis had not been told to renew his investigations after he had been stopped on May 2?

Mr. FINNEY. I do not so understand it.

Mr. BRANDEIS. Is there any evidence to the contrary that you know of that I have not called to your attention in this discussion? If there is let us hear it.

Mr. FINNEY. Here is a letter of June 3, 1908, and a telegram of May 28, 1908.

Mr. BRANDEIS. We have discussed them at considerable length. I called them to your attention.

Mr. FINNEY. And I called them to your attention.

Mr. BRANDEIS. Possibly we both joined in that. Is there anything else?

Mr. FINNEY. I do not recall anything at present.

Mr. BRANDEIS. Then if Mr. Schwartz is correct in his statement of the reason for the suspension until October 7, then there was no delay on Glavis's part—I mean no censurable delay between May 2 and, at all events, the arrival of the letter of October 7, was there?

Mr. FINNEY. I could not answer that yes or no, because Schwartz in two or three of his letters says that the matter was suspended until legislation could be enacted under the act of 1908. Taking those statements of Schwartz, Glavis should have gotten busy immediately after he received the letter of June 3, 1908. Taking Schwartz's letter of September 23, I think it is, he says it was suspended.

Mr. BRANDEIS. In his letter of October 3, directing him to take it up?

Mr. FINNEY. October 7, you mean.

Mr. BRANDEIS. October 7, yes, directing him to resume it.

Mr. FINNEY. I will have to look at that again. I do not remember that. The letter of September 23 was what I had in mind.

Mr. BRANDEIS. That is a memorandum?

Mr. FINNEY. The memorandum to the commissioner.

Mr. BRANDEIS. The letter of October 7 is in Senate document at page 503.

Mr. FINNEY. It says, I think, "Suspension should now be revoked"——

Mr. BRANDEIS. Yes; it should now be revoked——

Mr. FINNEY. Yes, sir; but that seems to my mind to be contradictory to other statements that he makes in other communications.

Mr. BRANDEIS. Well, Mr. Schwartz at that time—at September 23—that was something over four months after the order directing Glavis to stop, was it not?

Mr. FINNEY. That is correct.

Mr. BRANDEIS. Now, did you not think, from your knowledge of the Land Office and of Mr. Schwartz, that when he directed him to resume he knew that he did not have any directions to resume before?

Mr. FINNEY. The September 23 was a note to the commissioner——

Mr. BRANDEIS. Telling him he could. October 7 was the letter directing him to resume in pursuance of advice given by Schwartz to the commissioner on the 23d of September, which presumably the commissioner accepted. Is not that a fact?

Mr. FINNEY. No. Schwartz wrote the letter and signed the letter of October 7. He signed it as Acting Assistant Secretary, and says:

Your investigation of these coal entries was temporarily deferred during the pendency in the last Congress of a bill to provide additional laws for acquiring title to Alaska coal lands. Since that time the condition of business in your district has been such that no further investigation has been had of these particular entries.

Mr. BRANDEIS. Now, as a matter of fact, Mr. Finney, you know, do you not, from the evidence in this case, that Mr. Schwartz was in the West, and that on the 29th of September, 1908, he conferred fully with Mr. Glavis at Helena?

Mr. FINNEY. Yes; on page 502 of Senate document, Schwartz states that he met Glavis at Helena on September 29.

Mr. BRANDEIS. That is between this letter to the commissioner of the 23d and the time of the formal direction to resume this matter?

Mr. FINNEY. Yes, sir.

Mr. BRANDEIS. Now, the question that I put to you, and which I think you did not fully grasp, or else you would not have had any doubt in answering it—I say, assuming that Mr. Schwartz's statement is correct and that that is the order to resume of October 7, there had been no censurable delay on Mr. Glavis's part between May 2 and October 7, a period of five months?

Mr. FINNEY. No; Schwartz thinks not; because it was a deferred case pending legislation, and since that time he says:

The condition of business in your district has been such that no further investigation has been had.

Mr. BRANDEIS. Now, coming to the time following the presumable receipt of that letter of October 7, which I suppose reached him October 12 in due course of mail——

Mr. FINNEY. It should do so.

Mr. BRANDEIS. Yes. Now, it is a fact, is it not, that during that month Mr. Glavis was constantly, or practically constantly, engaged in the Oregon land cases and specifically in the Pacific Furniture case, which has been testified to as having been a very important case? You remember that to be a fact, do you not?

Mr. FINNEY. I do not remember the exact date; I know that Glavis was connected with that Pacific case, but I do not remember the exact date or month he was engaged in that trial.

Mr. BRANDEIS. Now, do you not recall that when Mr. Schwartz met Mr. Glavis at Helena on September 29 it was arranged that the whole force in Glavis's department should be at the disposal of the Department of Justice in the trial of these cases? You remember that, do you not?

Mr. FINNEY. Schwartz says that he ordered seven additional men to Portland, and that on September 30, 1908, Acting Secretary Pierce so advised the Department of Justice.

Mr. BRANDEIS. If you will turn to page 140 of the list, it appears in the telegram that Schwartz sent the commissioner, dated September 29, 1908 [reading]:

HELENA, MONT., September 29, 1908.

COMMR. G. L. O.,
Washn., D. C.

By wire to Glavis at Portland authorise thirty days employment of two special assistants six dollars per diem plus transportation expense. No subsistence. Also at once advise Dept. of Justice that Land Office has assigned seven additional men, and entire force available for necessary work in pending court cases. I have made assignments.

(H. H.)

SCHWARTZ.

Mr. FINNEY. I saw that telegram.

Mr. BRANDEIS. You saw that telegram?

Mr. FINNEY. Yes, sir.

Mr. BRANDEIS. Then it is a fact, is it not, that Mr. Dennett, acting on Mr. Schwartz's advice, did send the telegram to Mr. Glavis? It appears also at page 503 of Senate document and page 140 of the list.

Mr. FINNEY. I see a telegram here to Glavis dated September 30 [reading]:

[Telegram.]

LOUIS R. GLAVIS,
Chief Field Division, Portland, Oregon.

You are authorized to employ two assistants six dollars per day plus transportation. No subsistence.

DENNETT, Commissioner.

Mr. BRANDEIS. That is the telegram that Mr. Schwartz advised Mr. Dennett to send? And you find on page 141 of the list the letter of Acting Secretary Pierce to the Attorney-General [reading]:

DEPARTMENT OF THE INTERIOR,
Washington, September 30, 1908.

The ATTORNEY-GENERAL.

SIR: I have the honor to inform you that by wire from Helena, Montana, by even date, chief of the field service, H. H. Schwartz, advises the Commissioner of the General Land Office that seven additional men and the entire field force available at Portland, Oregon, have been assigned to necessary duty in pending court cases in that district.

Very respectfully,

(Signed)

FRANK PIERCE,
Acting Secretary.
F. D.

Mr. FINNEY. Yes, sir.

Mr. BRANDEIS. That is true, isn't it?

No response.

Mr. BRANDEIS. So that Glavis was expressly directed at that time to give his whole time and attention to those cases in Portland, was he not? You so understand it, do you not?

Mr. FINNEY. Why, these letters appear to indicate that the entire available force was assigned to that work. I do not know where Mr. Glavis was personally.

Mr. BRANDEIS. If you have any doubts about it, look at his daily reports, the daily reports of Glavis for October, 1908. Didn't he there personally attend to things? First, in preparation and afterwards in actual attendance at the trial in the case of the Pacific Furniture and Lumber Company? Page 870.

Mr. FINNEY. October 3, he says:

In U. S. atty's office all afternoon working on records in Pacific Lumber and Furniture Co. case.

Mr. BRANDEIS. Look on the next page, 871, where the dates for later in the month are.

Mr. FINNEY. October 19 it says:

Assisting in case United States versus Pacific Furniture and Lumber Company.

Mr. BRANDEIS. And those entries appear from day to day—not every day in the month, but a large number of days, do they not?

Mr. FINNEY. He seems to have been in Portland, according to these reports, practically the entire month.

Mr. BRANDEIS. Now, it is a fact, is it not, that in the month of November Mr. Schwartz himself was in Portland with Mr. Glavis, the 12th, 13th, 14th, 15th, and 16th, in daily conference with him in regard to the business in Portland and that district?

Mr. FINNEY. The reports so state. I do not know personally whether he was there or not.

Mr. BRANDEIS. And it is a fact, is it not, that there have already been put in evidence in this case, the letters both from the commissioner personally, and the commissioner as representing the Secretary of the Interior: One a letter of November 20, 1908, and the other of November 24, 1908, which appear in the record at pages 142 and 144, showing that the office was fully advised as to what Glavis was doing and complimenting him on his performance.

Mr. FINNEY. The letter of November 20, 1908, on page 142, congratulates Glavis on the termination of the Pacific Furniture case. The letter on page 144, of November 24, 1908, states that the Secretary of the Interior desires Mr. Dennett to express to Mr. Glavis his appreciation of the successful outcome of that case.

Mr. BRANDEIS. You will remember that in the letter of November 20, Mr. Dennett closes with saying:

You must be head over heels in work, but I trust you will keep us posted on the termination of these cases from time to time, so that we can advise the Secretary's office of the progress of the work, and make them realize the boys are up-to-date.

Mr. FINNEY. That, I suppose, means the cases pending in his division.

Mr. BRANDEIS. Those are the cases that the letter is discussing—the C. A. Smith cases?

Mr. FINNEY. Well, the furniture case was terminated. He must have had reference to other cases, too. Perhaps the Alaska coal cases; I do not know.

Mr. BRANDEIS. Now, the Smith case came just then, did it not?

Mr. FINNEY. I do not know.

Mr. BRANDEIS. The Smith verdict?

Mr. FINNEY. I am not familiar with that case, Mr. Brandeis.

Mr. BRANDEIS. You recall, do you not, the letter of the 24th, of Mr. Dennett, in which he says:

This office joins with the Secretary in complimenting you for your ——— in these cases, especially the quick work you made in the Pacific Furniture and Lumber case, having only had the case turned over to you in April last.

Mr. FINNEY: Yes; he refers there to the Pacific Furniture Company cases and the Washington coal cases.

Mr. BRANDEIS. Now, it is a fact, is it not, that the circumstances which I have just called to your attention, showing the occupation of Mr. Glavis and showing the satisfaction of the office with Mr. Glavis during that period, were not called to the President's attention, either by Mr. Ballinger or by any of his subordinates, or by the Attorney-General?

Mr. FINNEY. I do not know. I do not recall. I do not remember any specific reference to that.

Mr. BRANDEIS. There is nothing that is either specific or general. Is there, which calls those to the President's attention?

Mr. FINNEY. I do not recall any such one.

Mr. BRANDEIS. Now, we have covered as well as we may the period from May 2, 1908, to the end of November, 1908, and I want to go back now to the period preceding that, and particularly to a letter which it referred to, the letter of February 5, 1908, which appears in the list at page 52 and in the Senate document at page 465, and I call your attention specifically to this paragraph [reading]:

The office feels that applicants to purchase coal lands in Alaska have, for reasons not in any way chargeable to you, already been considerably delayed.

Now, as a matter of fact, Mr. Finney, the delay in the investigation of those cases prior to that time had been in part, at least, attributable to Mr. Ballinger himself, had it not?

Mr. FINNEY. It was, at least, with the reference to the one case, the Mullin entry. Mr. Ballinger directed that that be held up until it could be further investigated by special agents, which was done.

Mr. BRANDEIS. That is not the only one, is it? Is not this the fact, that Commissioner Dennett directed Jones on the 21st of June to take up the case of the Alaska cases and to pursue them to the exclusion of all other business? Mr. Ballinger took charge of those cases in July out in Seattle, and in August directed Jones to discontinue the investigation, and never thereafter directed the resumption of any of the investigations until he directed Glavis, who came here on his own accord in December—isn't that the fact?

Mr. FINNEY. I did not understand that to be the fact.

Mr. BRANDEIS. What do you not understand to be the fact?

Mr. FINNEY. The statement you have made in that question.

Mr. BRANDEIS. What part of it?

Mr. FINNEY. My recollection is that Mr. Ballinger was in Seattle in the summer of 1907; that he was consulted by Jones on several occasions as to how the investigation should be conducted, and that on one occasion Mr. Ballinger told Jones he wanted to get certain information regarding these claims for use, so that he might intelligently present the matter to Congress during the next winter, if need be, and that it was suggested, either by Jones or Commissioner Ballinger, that two or three of the claimants in each group be interviewed by Jones, and Jones proceeded to make those interviews and reported

subsequently to the General Land Office, and I do not know but what Jones possibly stated that he reported to Commissioner Ballinger as well.

Mr. BRANDEIS. Personally delivered his report to him?

Mr. FINNEY. I do not understand that Commissioner Ballinger ordered him to cease investigations. I do not understand that he assumed control. He conferred with Jones, and Jones acted simply on his suggestion.

Mr. BRANDEIS. It is a fact, is it not, that Jones in the reports of August 10 and August 13, 1907, which went to the General Land Office, recommended, although the August 10 report had gone to Secretary Ballinger in person at Seattle, but which was sent to the General Land Office, that he then advised that all of these claims be thoroughly investigated by a fearless investigator?

Mr. FINNEY. That is the usual termination of all of his reports, I think.

Mr. BRANDEIS. That is true in that case?

Mr. FINNEY. Yes, sir.

Mr. BRANDEIS. And that no instructions were thereafter given Jones between October 13 until after Glavis's visit to Washington in the latter part of December, 1907, when he went back with the authority to investigate these cases?

Mr. FINNEY. You mean all these cases—the Alaska coal cases generally?

Mr. BRANDEIS. Yes; so far as they deal with the West.

Mr. FINNEY. Because if you were referring to the Cunningham cases I would have to modify my answer.

Mr. BRANDEIS. We will get to that in a moment. I mean from August 13 up to the latter part of December. That is true, is it not?

Mr. FINNEY. I do not recall any instructions issued between those dates.

Mr. BRANDEIS. Between those dates?

Mr. FINNEY. No, sir.

Mr. BRANDEIS. Consequently, whatever delay there was in the suspension of the investigation between August 13, when Jones made the second of his reports, and the latter part of December, when Glavis was authorized to proceed, were delays for which Glavis was in no way responsible? That is true, is it not?

Mr. FINNEY. Why, I think that is true, because Glavis was not in charge of that case, as I understand it, until December.

Mr. BRANDEIS. And then it is absolutely clear, as Dennett says here, that whatever delays there had been prior to February 5, 1908, are delays which are in no way chargeable to Glavis? That is true, is it not?

Mr. FINNEY. That is practically true; yes, sir.

Mr. BRANDEIS. Well, it is absolutely true, is it not?

Mr. FINNEY. No. For entry was suspended on January 23, 1908, I think, on Glavis's protest, and Glavis was in charge of the case between January 23 and February, whatever date it was.

Mr. BRANDEIS. You would not call that censurable delay, would you?

Mr. FINNEY. Oh, no; but you asked me specifically as to the date in February.

Mr. BRANDEIS. I asked you whether that delay was not—whether the statement of Commissioner Dennett is true in his letter of February 5, “that there have been no delays for which you are in any way chargeable?”

Mr. FINNEY. So far as I know, Glavis was not responsible for any delays prior to the time of this letter.

Mr. BRANDEIS. Now, it is also true, is it not, that between the time of that letter—that is, the receipt of this letter of February 5, which would make it about February 12—between that and May 2, Glavis was diligent in the pursuit of the investigation?

Mr. FINNEY. I do not know whether he was diligent or not. He had secured that Cunningham journal during that time.

Mr. BRANDEIS. He was at least efficient, if he was not diligent, wasn't he?

Mr. FINNEY. He produced the Cunningham journal during that time. I can not say whether he was diligent or efficient.

Mr. BRANDEIS. He secured more than that journal, did he not?

Mr. FINNEY. I think he secured some affidavits.

Mr. BRANDEIS. He secured more than affidavits, didn't he?

Mr. FINNEY. I do not know.

Mr. BRANDEIS. He secured circulars and a lot of different documents from these various affiants, did he not?

Mr. FINNEY. I do not know whether he secured them or Jones secured them.

Mr. BRANDEIS. I do not mean Glavis personally, but Glavis and those under him, he being in charge?

Mr. FINNEY. I believe they got some additional evidence.

Mr. BRANDEIS. They got a good deal, did they not?

Mr. FINNEY. Now, I can not answer that question.

Mr. BRANDEIS. Did they not get during that time a large part of all of the evidence that they have gotten, with the exception of the results of the field investigation, which was not made until the summer of 1909.

Mr. FINNEY. That may be.

Mr. BRANDEIS. Let me call your attention to this: You recall that Glavis took up in February, with Agent Doyle, this question of laying out the work for the Cunningham claims, and learned from him of the tunnel, and wrote, under date of February 27, to Mr. Schwartz, that a field investigation was necessary? Do you not recall that?

Mr. FINNEY. No; I do not remember it.

Mr. BRANDEIS. You will find it on page 644 of the record—not of the Senate document, but of the record.

Mr. FINNEY. Yes; that is a letter addressed to Schwartz of February 27, 1908, and it speaks of a trip to Alaska.

Mr. BRANDEIS. And is in relation to the field examination, isn't it, which he believed to be necessary?

Mr. FINNEY. Yes; he says he thinks a field examination ought to be made, or must be made.

Mr. BRANDEIS. And that is a letter which was not submitted to the President?

Mr. FINNEY. I do not know. I did not find it in this document.

Mr. BRANDEIS. It is not in the Senate document, is it?

Mr. FINNEY. I do not find it in the Senate document, I say.

Mr. BRANDEIS. It is not in the list, is it, that Mr. Sleman prepared?
Mr. FINNEY. Not that I know of.

Mr. BRANDEIS. Why wasn't it submitted to the President?

Mr. FINNEY. That is a question I can not answer. I did not make up the record.

Mr. BRANDEIS. Well, after that, very shortly after that, you know from the affidavits introduced that Mr. Glavis and Mr. Jones were in Spokane, where they took the affidavits of Campbell and others on February 27, 1908? You know those affidavits, do you not?

Mr. FINNEY. I thought those affidavits were taken by Jones in the fall of 1907.

Mr. BRANDEIS. No; I think not. Well, look at the Cunningham record, the affidavits which were put in evidence by Mr. Sheridan. We have the Cunningham affidavit of March 6, which is Exhibit 3, on page 607; we have the Orville C. Jones affidavit of March 5, 1908, that was taken on that date; we have the affidavit of Johnson, on March 5, and we have the affidavit of F. Cushing Moore, taken on March 5. You recall those, do you not?

Mr. FINNEY. I have not seen the record of the Cunningham hearings.

Mr. BRANDEIS. You know, do you not, that practically all of those—that is, not all of those, but nearly all of the Cunningham affidavits that are put in evidence there—bear dates in March and in April, and the communications in the earliest part of May?

Mr. FINNEY. I have heard you reading the dates there. I do not question them.

Mr. BRANDEIS. And you knew them before? Haven't you ever examined those? This book is in evidence; this Cunningham record has been put in evidence in this case.

Mr. FINNEY. No; I haven't examined it.

Mr. BRANDEIS. You also have examined, have you not, the daily records of Mr. Glavis, which have been put in evidence in this case, for the months of March, April, and May, 1908?

Mr. FINNEY. I have not made any examination of them. I may have referred to some of them while the witnesses were testifying, but I have not looked them through.

Mr. BRANDEIS. Now, I ask you whether you know of anything in this record which supports the statement of the Attorney-General in his conclusion, the statement which he makes on page 804 [reading]: if Glavis had properly availed of the assistance placed at his disposal by the Land Office, should have been completed and ready for trial not later than the autumn of 1908.

Mr. FINNEY. Well, that is a matter of opinion. I could only give you my opinion.

Mr. BRANDEIS. I did not ask you for an opinion; I asked you for evidence, and if there was any evidence that supported that finding, I want you to merely call the attention of the committee to it.

Mr. FINNEY. I assume it is in this document, but I can not, off-hand, call attention to the specific letters or papers which support it.

Mr. BRANDEIS. You know of nothing at this moment which does not—

The CHAIRMAN. Mr. Brandeis, is not that more appropriate for counsel than for the witness to argue, if there is any evidence in the record?

Mr. BRANDEIS. I won't press that. The witness says he does not remember it—except I will go on to this: Now, Mr. Finney, you stated in this record, page 3085, the first time that I asked you who began to inquire of you in connection with this report of the Attorney-General, and you said: "Well, I did not write that summary," referring to the Attorney-General's summary.

Mr. FINNEY. That is correct.

Mr. BRANDEIS. Now, isn't it a fact that you did contribute to the matter which appears in that summary?

Mr. FINNEY. There are certain memorandums and letters in this Senate document which I either wrote or helped to write, or reviewed, but I did not write any of this summary, and I did not furnish the Attorney-General with specific information, if that is what you mean, or notes or data on which to base his summary or conclusions.

Mr. BRANDEIS. Did you not furnish them to somebody else to furnish to the Attorney-General?

Mr. FINNEY. No. I furnished some data from the records to Mr. Pierce for his letter to the President.

Mr. BRANDEIS. Yes.

Mr. FINNEY. And I think, perhaps, I furnished some little data to Secretary Ballinger in regard to water-power sites in his letter; that was the subject I had looked up in the Land Office; I had nothing to do—

Mr. BRANDEIS. But you were here during all the time Secretary Ballinger and Secretary Pierce and the others were comparing their letters to the President, were you not?

Mr. FINNEY. I was.

Mr. BRANDEIS. When did you return from that vacation which was referred to in connection with the Siletz cases?

Mr. FINNEY. It must have been about the 15th or 16th of August; I am not sure as to the exact date. I had been absent about two weeks.

Mr. BRANDEIS. And Secretary Ballinger did not return from the West until the morning of September 3, did he?

Mr. FINNEY. I do not recall the exact date he returned; it was some time near the 1st of September.

Mr. BRANDEIS. His letter to the President, I think, is dated September 4.

Mr. FINNEY. I think he was in the office several days before that was sent. I am not certain about that; but, as I told you, I did not help him prepare that letter, except with the exception of the preparation of that water-power site matter.

Mr. BRANDEIS. Mr. Schwartz and Mr. Pierce were in the office before Mr. Ballinger arrived from the West, preparing their letters, were they not?

Mr. FINNEY. Mr. Pierce was in the office, preparing his letter to the President, and I assisted him.

Mr. BRANDEIS. And Mr. Schwartz was there?

Mr. FINNEY. Mr. Schwartz was in the General Land Office—in his own office, I presume.

Mr. BRANDEIS. I mean here in Washington.

Mr. FINNEY. Well, I was not taking part in his letter.

Mr. BRANDEIS. And you were in Washington from that time on continuously, were you not, until this investigation began?

Mr. FINNEY. I was in the office every day.

Mr. BRANDEIS. In the office every day, and I suppose active as others were in connection with these so-called charges, and the controversy between Pinchot and Ballinger.

Mr. FINNEY. Well, I have my regular work to do. I have been trying to attend to that.

Mr. BRANDEIS. I mean, in spite of your regular work, you have been giving material attention to the inquiries which came up in connection with this investigation?

Mr. FINNEY. I have been interested in it; yes, sir.

Mr. BRANDEIS. Well, it is more than a casual interest, isn't it?

Mr. FINNEY. I did not say casual. I said I had been interested in it.

Mr. BRANDEIS. Well, more than interested, haven't you?

Mr. FINNEY. I have taken a great deal of interest in it.

Mr. BRANDEIS. Now, I call your attention to the following paragraphs which appear in the conclusion of the Attorney-General's letter on page 802 of the record, and which were put in evidence in this case at the request of the chairman, and appear on page 295 of the testimony:

Second. The suggestion that it was unlawful for Mr. Ballinger to have any professional relation with these claimants because of his previous incumbency of the office of Commissioner of the Land Office is, in my opinion, unsound. The suggestion is based on section 190, United States Revised Statutes, which enacts:

"It shall not be lawful for any person appointed after the first day of June, one thousand eight hundred and seventy-two, as an officer, clerk, or employee in any of the departments, to act as counsel, attorney, or agent for prosecuting any claim against the United States which was pending in either of said departments while he was such officer, clerk, or employee, nor in any manner, nor by any means, to aid in the prosecution of any such claim, within two years next after he shall have ceased to be such officer, clerk, or employee."

Then follows the citation of the Harlan case and the Yeater v. Prince, and the other cases there referred to.

Mr. FINNEY. Yes, sir.

Mr. BRANDEIS. Now, did you not make some investigation of that question, directly or indirectly, giving the Attorney-General the benefit of your investigation?

Mr. FINNEY. I investigated that question thoroughly while Mr. Garfield was still Secretary. I did it at the request of Mr. Dennett, who said a disagreement had arisen at a conference at which he and Mr. Garfield and Mr. Pierce were present. I looked the matter up and wrote a memorandum, in which I cited the Harlan case and the Yeater v. Prince case, and in addition I cited the decision of the Supreme Court reports which I thought had a bearing upon the matter. It was a decision not on this particular matter, but one which uses that same language—any claim against the United States. I gave the original of that memorandum to Mr. Dennett at that time. After Secretary Ballinger returned from the West and while this matter was under consideration, I had made for him from my press copy book, which I had brought with me from the Land Office, a copy of the memorandum which I had written for Mr. Dennett and gave it to Mr. Ballinger, but it is not a copy, because I did not cite Attorney-General Pierce's opinion, but I did cite the decision of the Supreme Court. In other words, the language of this is not my language, but possibly Secretary Ballinger might have called attention to my

memorandum. I can not tell you as to that. I gave it to Secretary Ballinger.

Mr. BRANDEIS. When did you give it to Secretary Ballinger?

Mr. FINNEY. I do not remember; it must have been the first part of September.

Mr. BRANDEIS. It is a fact, is it not, that there is not a word about that provision of the law in either Secretary Ballinger's, nor Secretary Pierce's, nor in Mr. Schwartz's, nor in Commissioner Dennett's letter to the President?

Mr. FINNEY. I do not recall.

Mr. BRANDEIS. Is it not a fact also that there is not one word or suggestion of that in Mr. Glavis's charges to the President?

Mr. FINNEY. Why, one of Mr. Glavis's charges, as I recall it, was that Mr. Ballinger had acted as attorney for those people.

Mr. BRANDEIS. Now, will you turn to Senate document—

Mr. FINNEY. To the summary; is that what you have reference to?

Mr. BRANDEIS. No; I refer first to Mr. Glavis's full letter to the President, and ask you to turn to the passage on page 10. Is not this the only paragraph in the whole of Mr. Glavis's letter which bears upon Mr. Ballinger's acting as counsel:

Mr. Ballinger resigned as commissioner in March, 1908, and returned to Seattle to practice the law. He was retained as the legal representative by the claimants of the Cunningham group, and by a large number of the other claimants.

Mr. Ballinger continued to represent said claimants until he became Secretary.

Now, is that not the only passage in that letter, and is it not a fact that there is nowhere in that letter the slightest mention of Revised Statutes 190?

Mr. FINNEY. I do not recall the citation by Glavis of the statutes in this letter.

Mr. BRANDEIS. Now, I refer—

Mr. FINNEY. But I will say that—

Mr. BRANDEIS. I asked you whether you do not recollect the citation. That is all.

The CHAIRMAN. Let him finish his answer.

Mr. FINNEY. I was going to say that the charge was made in the newspapers by some one who was attacking Secretary Ballinger that he, contrary to the statutes of United States made and provided, acted as attorney, and of course it was seeing that that caused me to call his attention to the memorandum that I had previously written for Mr. Dennett's information. That is a question that comes up constantly in the Land Office. We have had a number of our clerks and employees resign to go into the practice of law. It is not a new question.

Mr. BRANDEIS. Now, let me turn to the summary at page 61 and will you tell me whether it is not the only reference in Mr. Glavis's summary to that fact?

Mr. FINNEY. You ask me if that statement is true?

Mr. BRANDEIS. I ask whether that statement is not in the summary, and is not the only statement in the summary of Mr. Glavis relating to Mr. Ballinger acting as counsel?

Mr. FINNEY. That statement is in the summary.

The CHAIRMAN. Will not that statement speak for itself as to what is in it?

Mr. BRANDEIS. Yes, Mr. Chairman. I now wish to pass to another matter.

Mr. FINNEY. I have answered the question. I have stated that the statement was in the summary.

Mr. BRANDEIS. Now, is it not a fact that the first time that any statement of Mr. Glavis referred to the Revised Statute 190, the paragraph quoted by the Attorney-General, was the statement by Mr. Glavis in the issue of Collier's, of November 13, 1909, in which Mr. Glavis says this:

It is with Mr. Ballinger's testimony before this committee in mind that we come to the next step. Within a short time after he resigned, Mr. Ballinger became attorney for the Cunningham group of claims.

There was at that time and now is in force a statute of the United States which says:

"It shall not be lawful for any person appointed after the 1st day of June, 1872, as an officer, clerk, or employee in any of the departments to act as counsel, attorney, or agent for prosecuting any claim against the United States which was pending in either of said departments while he was such an officer, clerk, or employee, nor in any manner, nor by any means, to aid in the prosecution of any such claim within two years next after he shall have ceased to be such officer, clerk, or employee."

This is the only statute that I know of regarding the impropriety of a government officer taking claims against the Government after his resignation.

That is the article—the whitewashing of Ballinger—the article which Mr. Vertrees referred to in the cross-examination of Mr. Glavis. Now, is not that the first time, and the only time, that any statement was made by Mr. Glavis, or purporting to come from Mr. Glavis, in reference to that statute?

Mr. FINNEY. Why, the insinuation in his charge was that Secretary Ballinger had violated the proprieties and the law by acting as counsel for those claimants. That was his insinuation.

Mr. BRANDEIS. Is there any insinuation that he had violated the law in the paragraph that I have referred to?

Mr. FINNEY. What did he put it in the report to the President for if he did not intend it to be a charge?

Mr. BRANDEIS. A man may do acts which are improper without being illegal.

The CHAIRMAN. It appears to me, Mr. Brandeis, that this is simply an argument as between yourself and the witness. We will accept Collier's statement. Put that in evidence, and Mr. Glavis's statement to the President, and we will consider them.

Mr. FINNEY. I will not accept Collier's statement.

Mr. BRANDEIS. I desire to put in the statement of Mr. Glavis, which is in the record but has not been put in evidence.

The CHAIRMAN. It is admitted.

Mr. BRANDEIS. Also the letter of Mr. Ballinger to the President, of September 4.

The CHAIRMAN. It is admitted.

Mr. BRANDEIS. And the letter of Mr. Dennett.

The CHAIRMAN. It is admitted.

Mr. BRANDEIS. And the letter of Mr. Pierce.

The CHAIRMAN. It is admitted.

Mr. BRANDEIS. And this article of Mr. Glavis.

Mr. OLMSTED. Are they not all in?

Mr. BRANDEIS. They are in evidence, but they have not been put into our record. I introduce them now in the record.

The CHAIRMAN. Collier's is admitted.

(The statements of Mr. Glavis, Secretary Ballinger, Commissioner Dennett, and Mr. Pierce, and the article in Collier's will appear in the proceedings of some subsequent day.)

Mr. BRANDEIS. I would like to ask you one other question, Mr. Finney. Is it not a fact that this statement of the Attorney-General, which purports to have been made September 11, 1908, bearing date September 11, 1908, was, as a matter of fact, not dated for more than two months after that time?

Mr. FINNEY. I do not know when it was written, Mr. Brandeis.

Mr. BRANDEIS. Are not the facts to which I have just called your attention intrinsic evidence that that is true?

Mr. FINNEY. No, sir; I do not think so.

The CHAIRMAN. The witness has said that he did not know.

Mr. FINNEY. Immediately upon that insinuation that Mr. Ballinger had done something wrong by acting as attorney for those people, my mind reverted to the very question that had been up with Mr. Dennett and Mr. Pierce and the memorandum that I had written, and our practice in connection with many of the employees who resign to go into the practice of the law.

Mr. BRANDEIS. But this statement of the Attorney-General is, is it not, an answer to the charges made by Glavis, and is it not a fact?

Mr. FINNEY. It says insinuations or charges here—insinuations or charges of improper action on the part of Secretary Ballinger.

Mr. BRANDEIS. Yes; but it states that the suggestion is based upon that statute, and is it not a fact that Mr. Glavis did not, until in the article of November 13, make any such suggestion?

Mr. FINNEY. To a lawyer's mind, one familiar with the Revised Statutes, it must be clear that that can be the only one on which his suggestion could be based.

Mr. BRANDEIS. Could it not be based on the obvious impropriety of a lawyer first being on one side of a case, and knowing all about one side of a case, and then taking the other side of the case?

Mr. FINNEY. That was not the fact in this case.

Mr. BRANDEIS. Did not Mr. Ballinger know everything that was known by the department or by anyone in the department?

Mr. FINNEY. I do not believe that he did.

Mr. BRANDEIS. Did he not know the reports that Jones had made?

Mr. FINNEY. It is stated that Jones furnished him with a copy of his report, which was not adverse to the Cunningham case, as I read it.

Mr. BRANDEIS. I am not asking you whether it was adverse or favorable. I am asking you if he did not know of it.

Mr. FINNEY. Jones said that he furnished him a copy of his report of August 10.

Mr. BRANDEIS. And a copy of the report of August 13?

Mr. FINNEY. Possibly; I do not recall that.

Mr. BRANDEIS. And Love's report?

Mr. FINNEY. Mr. Ballinger said that he considered Love's report at the time Moore was in Washington, in December, 1908.

Mr. BRANDEIS. It appears, does it not, by the daily record that Love and Jones were conferring with Mr. Ballinger?

Mr. FINNEY. Yes, sir; their testimony states that.

Mr. BRANDEIS. And their daily reports show it and confirm their testimony, do they not?

Mr. FINNEY. Yes, sir; and——

Mr. BRANDEIS. Does it not appear that whatever was known by anybody, be it much or little, was known by Mr. Ballinger?

Mr. FINNEY. Yes, sir; and that there was nothing unfavorable up to the time he resigned from the office of commissioner.

Mr. BRANDEIS. If there was nothing unfavorable, it might, as a matter of practice—as a practical matter—be one of the most important things, would it not, to know the weakness of the case as well as the strength?

Mr. FINNEY. I do not know——

The CHAIRMAN. Will you allow me, Mr. Brandeis, to make a suggestion to you in the utmost friendship? What is the object of arguing as to the moral question with the witness, whether Mr. Ballinger did wrong or right in that matter? That is a question the committee will pass upon; you can argue that to the committee. What is the use of discussing it with the witness?

Mr. FINNEY. I would like to state——

The CHAIRMAN. You will have an opportunity, Mr. Brandeis, to argue that question to the committee. There is no occasion to argue it with the witness.

Mr. BRANDEIS. I think if you will allow the question to be read you will see that it was not with a view to arguing, but it was with a view to calling the witness's attention to the fact, that is all.

Mr. FINNEY. I want to say that from my knowledge of Mr. Ballinger and a knowledge of the records of the office, etc., I do not believe he ever examined the Cunningham coal cases, or any other coal case. I do not think that he is experienced in the technical examination of cases, and I do not think that he did in this case.

Mr. BRANDEIS. You know, as a matter of fact, that he purported to have enough knowledge of this case to direct that those claims be clear listed.

Mr. FINNEY. That simply meant to clear list them from the investigation which the special agent was conducting, because the agent had reported favorably.

Mr. BRANDEIS. Ordering it to patent?

Mr. FINNEY. No, sir; ordering it to the Mineral Division for examination there.

Mr. BRANDEIS. Now, you say ordering it to patent——

Mr. FINNEY. No, sir; I did not say ordering it to patent.

Mr. BRANDEIS. You say a favorable report. Now, let me ask you this question. That Love report was dated August 2, was it not?

Mr. FINNEY. 1907; yes.

Mr. BRANDEIS. And when did it reach the General Land Office?

Mr. FINNEY. I do not know the date; presumably within a month after it was written.

Mr. BRANDEIS. Easily within a month, because it was sent from Seattle, not from Juneau.

Mr. FINNEY. I thought it was sent from Juneau.

Mr. BRANDEIS. No, sir; do you not remember that Mr. Love was in Seattle?

Mr. FINNEY. Well, it reached the Land Office in five or six days.

Mr. BRANDEIS. Yes; or at all events within eight or ten days, even if there were delay.

Mr. FINNEY. Yes, sir.

Mr. BRANDEIS. Now, do you not know that after that Love report was received, namely, on September 1, 1907, Mr. Schwartz gave directions to the Mineral Division not to pass anything to patent until it had been passed upon by Division P?

Mr. FINNEY. Mr. Dennett gave these directions in his letter of September 1, 1907, initialed by Mr. Schwartz.

Mr. BRANDEIS. Mr. Dennett and Mr. Schwartz cooperated in giving these directions, the one by initialing and the other by signing the letter.

Mr. FINNEY. Mr. Dennett was the officer vested with authority to make the order.

Mr. BRANDEIS. And he gave the direction?

Mr. FINNEY. Yes, sir.

Mr. BRANDEIS. Upon the advice, apparently, of Mr. Schwartz.

Mr. FINNEY. That seems to be correct.

Mr. BRANDEIS. After the Love report was in the office he gave that direction, did he not?

Mr. FINNEY. I presume the Love report was in the office at that time. I do not know in what connection.

Mr. BRANDEIS. And the only cases to which that might have applied—I mean as a practical matter—were the Cunningham cases because there had not been any other entries except in the Cunningham cases?

Mr. FINNEY. Yes; but Love's report only covered 24 of the 33 entries.

Mr. BRANDEIS. I say that it did not apply to any other case: it applied to those specific cases.

Mr. FINNEY. Yes, sir; I presume it did. And it would also apply to any future entries that might be made.

Mr. BRANDEIS. Now, Mr. Finney, you were asked by Mr. Vertrees some questions in regard to the Siletz matter. Is it not a fact that no question was asked you either by Mr. Pepper or by myself in regard to the Siletz claim?

Mr. FINNEY. You have not asked me any as yet; no, sir.

Mr. BRANDEIS. Well, is it not a fact that the reason that you testified on the Siletz matter was because of an article that appeared in Collier's under date of March 12, 1910, and which presumably, according to the practice of Collier's, would have been generally sold by March 10?

Mr. FINNEY. By March 10?

Mr. BRANDEIS. This is a March 12 article. I am referring to another article, not the Glavis article.

Mr. FINNEY. No, sir; I did not know that Collier's had published anything on the Siletz matter.

Mr. BRANDEIS. Let me see whether you do not recollect this from Collier's in the issue of March 12?

Mr. FINNEY. It was published, was it, on March 12?

Mr. BRANDEIS. The date is March 12, and as you know Collier's appears on the news stands a few days before the nominal date of issue.

Mr. FINNEY. I am not very familiar with the habits of Collier's.

The CHAIRMAN. You do not keep files of it in the Land Office, do you?

Mr. BRANDEIS. I thought they did.

Mr. FINNEY. Not complete files. We have a few copies.

Mr. BRANDEIS [reading]:

It must have been another such decision of Assistant Secretary Pierce to which Schwartz referred when he wrote the following, in which the italics are ours:

"I came very near getting a grouch to-day when Pierce ordered me not to take any 'unfavorable action' on Siletz Indian 'homesteads' until such time as Mr. Finney might return from his leave and digest a lot of papers and petitions, etc., sent to the Judge and by him forwarded here. The thing I did not like was that Pierce refused to give us any written order in the premises. *I told Judge Ballinger about three months ago that this Alaska business was badly loaded, and the Judge told me some fellows got their ear [so] close to the ground that they could not hear anything. I tell you now that there is a worse load in this Siletz matter.*"

By all means let the investigating committee inquire into the Siletz Indian homestead.

Now, was it not that passage—

Mr. FINNEY. No, sir; it was not, Mr. Brandeis. I had not seen that. I suggested to Mr. Vertrees that he had better clear up that situation because Schwartz's memorandum was in this Senate document which has been introduced before the committee, and it would be advisable for me to explain the exact facts in connection with the Siletz matter, because it might be contended that there was some mysterious fraud or wrongdoing connected with the matter, whereas it was a very simple matter. It was simply a request from these poor people to withhold action until they could get a bill through Congress, and Secretary Ballinger said he did not feel justified in doing it.

Mr. BRANDEIS. Now, will you, merely for the purpose of refreshing your recollection—

The CHAIRMAN. I want to interrupt you here for a moment to say that a bill has been introduced for their relief by Senator Chamberlain, and the bill was referred to the department, and the department has sent in a letter reporting against the bill. I will have the bill inserted in the record.

(The bill and accompanying report of the department are as follows:)

[S. 5628, Sixty-first Congress, Second session.]

A BILL Relating to homestead entries in the former Siletz Indian Reservation, in the State of Oregon.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no homestead entry made of lands within the former Siletz Indian Reservation, in the State of Oregon, upon which proof was submitted without protest or objection prior to December thirty-first, nineteen hundred and six, shall be canceled merely because of insufficient compliance with law in the matter of residence or cultivation where it shall be shown, to the satisfaction of the Secretary of the Interior, that the entry was made for the exclusive use and benefit of the entryman, and that he built a habitable house upon the land, actually entered into occupation thereof, and cultivated a portion of the tract entered; and where any such entry has heretofore been canceled the same may be reinstated upon application filed within six months from the passage of this act, and where, at the date of the filing of such application for reinstatement, no other entry is of record covering such land: Provided That nothing herein contained shall prevent or forestall investigation by the land department of any such entry upon any pending charge of fraud in connection with the making or perfection of the same.

DEPARTMENT OF THE INTERIOR,
Washington, March 9, 1910.

Hon. KNUTE NELSON,
Chairman Committee on Public Lands,
United States Senate.

Sir: I am in receipt of your request for report on S. 5628, which provides that no entry within the Siletz Indian Reservation under which proof was made without protest prior to December 31, 1906, shall be cancelled for insufficient residence and

cultivation in any case where it is shown to the satisfaction of the Secretary of the Interior that the entry was made for the exclusive use and benefit of the entryman and that he built a habitable house on the land, actually entered in occupation thereof and cultivated a portion of the tract entered; and, further, that all such entries have been heretofore cancelled shall, on application made within six months from the passage of the act, be reinstated in all cases where the lands involved have not been reentered at the date of the application for reinstatement.

The records of the General Land Office show 124 unpatented entries, embracing 19,840 acres on which proofs were made prior to December 31, 1906, without protest or objection at the date of the proof. Final certificates have issued on 50 of these entries; but, as practically all of them were protested within two years from the issuance of the certificate, they are not confirmed by section 7 of the act of March 3, 1893 (26 Stat., 1095). Proofs made under 50 of these entries were suspended for field investigation before the issuance of final certificate, and are now awaiting action. Relinquishment of 24 of these entries have been filed after field investigation, but the lands they embrace are now covered by entries and they would not be affected by this act.

By the act of Congress (28 Stat., 326) subjecting lands in the Siletz Indian Reservation to settlement, it has declared:

"The lands so ceded shall be disposed of until further provided by law under the townsite law and under the provisions of the homestead law; provided, however that each settler, under and in accordance with the provisions of said homestead law shall, at the time of making his original entry, pay the sum of fifty cents per acre in addition to the fees now required by law * * * and final proof to be made within five years from the date of entry, and three years' actual residence on the land shall be established by such evidence as is now required in the homestead proofs as a prerequisite to title or patent."

The lands covered by the entries affected by the bill above referred to are generally rough, not easy of access, and chiefly valuable because of the heavy growth of timber thereon. Investigation by the department has developed that compliance by the entrymen with the law as to residence and cultivation has in most instances been of that character which has been uniformly denied recognition by the department as basis for securing title under the homestead law, which, as recently said by the Supreme Court (*McCaskill v. U. S.*), "gives the right of entry * * * upon the condition * * * that the application is honestly and in good faith made for the purpose of actual settlement and cultivation * * * and does not apply to enter the same for speculation. The purpose of the law * * * is to give a home, and to secure the gift the applicant must show that he has made the land a home."

It is not believed that conditions under which these lands were entered are such as to justify legislation which would have the effect of making an exception in these cases and waiving compliance with the wholesome and well-understood requirements obtaining as to homestead settlement generally.

Very respectfully,

R. A. BALLINGER, *Secretary.*

Mr. BRANDEIS. Now, Mr. Finney, merely for the purpose of refreshing your recollection, will you not make search among the Siletz papers in the Land Office and see whether on or about March 10 or 12 there were not sent by the Land Office telegrams canceling the Siletz claims immediately after this article appeared in *Collier's*?

Mr. FINNEY. I understand that there were two or three claims in contest before the department, and the cancellation was wired out, but not on account of anything in *Collier's*.

Mr. BRANDEIS. Without asking you whether it was on account of anything in *Collier's*, will you look and give us the dates and copies of the telegrams?

Mr. FINNEY. Yes; and I will give the reasons why they were sent.

Mr. BRANDEIS. Certainly. You may give them now if you like.

The CHAIRMAN. Give those reasons now.

Mr. FINNEY. A Portland attorney was right here on the ground prepared to enjoin the Secretary of the Interior from canceling those entries, and those telegrams were sent in order that the cancellation might be effected and prevent him from getting into the courts here

in the District with an injunction or plea for a restraining order, which in our opinion had no merit.

Mr. BRANDEIS. Well, you will submit all of the telegrams you sent to the committee?

Mr. FINNEY. Yes, sir; I have no objection to submitting them.

Mr. BRANDEIS. Now, you stated in your direct examination at page 3029 that there were precedents for this cutting out of the local office. I call your attention to the statement of Mr. Schwartz at page 247 of Senate document to the effect that he does not know of any precedent for that act. Can you furnish the committee with the book and page of any precedent?

Mr. FINNEY. I recall some cases that passed through my hands when I was law clerk in the Land Office.

Mr. BRANDEIS. Give us the names of those cases.

Mr. FINNEY. I do not remember the names of the cases now. I might possibly be able to locate some.

Mr. BRANDEIS. Will you make search, and if you find any such cases let us have a list of the cases and the papers in the cases?

Mr. FINNEY. I have no objection to making the search, but I do not know that I can promise to take the papers out of the General Land Office and send them up here.

Mr. BRANDEIS. If you will let us know what they are we can make the proper call, if it should be necessary.

Mr. FINNEY. I will endeavor to find them.

Mr. BRANDEIS. Now, I asked you to make search for certain other papers in Division N relating to the Cunningham cases, and I think you found some letters which had not been produced before. Will you now produce those letters?

Mr. FINNEY (producing papers). Do you want them read?

Mr. VERTREES. Yes; read them.

The CHAIRMAN. If they are not long, read them.

Mr. FINNEY. The first one is dated July 25, 1907, and is as follows:

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., July 25, 1907.

Hon. R. A. BALLINGER, Seattle, Wash.

Sir: I have the honor to advise you that upon the receipt of your telegram of the 23d to "Suspend action coal application Ignatius Mullen, D. S. 180, awaiting special agent's letter," the case which was identified as Juneau, Alaska, coal entry No. 5, D. S. 180, was duly noted and the telegram filed therewith.

Very respectfully,

FRED DENNETT, Acting Commissioner.

The other letter is dated January 15, 1908, addressed to the register and receiver at Juneau, Alaska, and is as follows:

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., January 15, 1908.

REGISTER AND RECEIVER,
Juneau, Alaska.

Sir: I return herewith for the register's signature final certificates of entry in coal entries 2, 4, 12, 13, 14, and 15.

In the case of coal entry 7, made March 13, 1907, by Henry W. Collins for the Tenio coal claim, and coal entry 14, made March 29, 1907, by Henry Wick for the Candelaria coal claim, you forwarded blank forms of the register's certificate of posting with a copy of the printed notice in each case attached thereto. Publication was made in each case from April 21, 1906, to and including June 23, 1906.

3204 INVESTIGATION INTERIOR DEPT. AND BUREAU OF FORESTRY.

The register will accordingly promptly forward proper evidence of posting in the local office and return the final certificate of entry when signed, to this office.

Very respectfully,

FRED DENNETT,
Assistant Commissioner.

The last one is a letter dated December 26, 1907, and is as follows:

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., December 26, 1908.

HON. JOSEPH H. DIXON, *U. S. Senate.*

MY DEAR SIR: I have the honor to acknowledge the receipt of your letter of December 19, 1908, inclosing letter from Mr. J. J. Hayes relative to coal entry 30, made April 13, 1907, by Orville D. Jones for the Avon coal claim, U. S. survey No. 37, Juneau, Alaska, land district.

In reply I have to advise you that the above entry has been suspended awaiting investigation by the special service division of this office.

Mr. Hayes's letter is herewith returned.

Very respectfully,

(Signed) FRED DENNETT,
Commissioner.

Mr. BRANDEIS. Now, I also asked you, Mr. Finney, to furnish the record which shows the date on which all of these claims, or any of them, were passed upon by the mineral division, you having already, or I, having put them in evidence, the reports of Mr. Heltman for Division P reporting upon 8 of the 33 claims. Will you now furnish the statement showing the disposition, if any, of the other 25 claims in Division N.

Mr. FINNEY. I furnished to the committee a copy of the pages of the coal docket upon which all of the Cunningham coal entries were noted. I have no other statement.

Mr. BRANDEIS. That statement which you furnished to the committee—Mr. Sleeman—does not appear to be here at the moment—I would like to put in evidence.

The CHAIRMAN. Very well; it will be received in evidence.

(The paper is as follows:)

Docket No.	Entry No.	Date of entry.	Land officer.	Name of entry-man.	Part of section.	Section.	Township.	Range.	Area.	Amount paid in advance.	To whom and when assigned.	Disposition.
.....	8	1908.	Vernal, Utah.....	John H. Clegg.....	NE 1/4 NW 1/4 SW 1/4	31	1 S	10 W	477.62	\$1,600.00	J. D. S., Mar. 15, 1907.	(APP. Apr. 1, 1906, C. A. H., list 206.)
.....	9	do.	do.	William J. Clegg.....	N 1/4 NW 1/4 SW 1/4	32	1 S	10 W	160.000	1,600.00	do.	(APP. July 13, 1907, F. P. McD., list 170.)
.....	10	do.	do.	Joseph Cummings.....	W 1/4 SW 1/4	29	1 S	10 W	120.000	1,200.00	do.	(APP. Apr. 1, 1906, C. A. H., list 206.)
Ute..	83	Oct. 10	Montrose, Colo.....	Henry Denman.....	SE 1/4 E 1/4	30	11 S	98 W	160.000	3,200.00	(MCD. July 1, 1907, J. D. S.)	(APP. July 13, 1907, F. P. McD., list 170.)
.....	1	Feb. 6	Williston, N. Dak.....	Margaret Slater.....	Lot 14, 15, and 16.	3	15 S	94 W	160.000	3,200.00	J. D. S., Mar. 28, 1907.	(APP. July 13, 1907, F. P. McD., list 171.)
Reg..	11	Nov. 23	Montrose, Colo.....	Malnard R. Hall.....	NW 1/4 NW 1/4	15	45 N	13 W	40.000	400.00	do.	(APP. Sept. 11, 1907, F. P. McD., list 178, Pat. No. 2549.)
.....	84	Nov. 9	do.	Alice A. Bayles.....	Lot 12	5	11 S	98 W	80.000	1,600.00	do.	(APP. July 15, 1907, F. P. McD., list 171.)
Ute..	1	Feb. 26	Juneau, Alaska.....	Andrew L. Scofield.	Lot 9.	6			159.161	1,591.61	J. D. S., Mar. 28, 1907.	(APP. Jan. 7, 1908, C. A. H., list 196.)
.....	2	do.	do.	Francis Jenkins.....					159.241	1,592.41	do.	
.....	3	do.	do.	Charles J. Smith.....					155.447	1,554.47	do.	
.....	4	do.	do.	Horace C. Henry.....	SE 1/4 SW 1/4	25	44 N	81 W	159.001	1,590.01	do.	
.....	85	Jan. 9	Buffalo, Wyo.....	Daniel D. Sullivan.....	SE 1/4 SW 1/4	26	57 N	76 W	40.000	800.00	do.	(APP. June 9, 1906, C. A. H., list 216.)
.....	86	Jan. 16	do.	Clarence W. Wulphin.	N 1/4 NW 1/4	30	57 N	76 W	160.000	1,600.00	do.	(APP. Oct. 9, 1907, C. A. H., list 182, Pat. No. 2560.)
.....	87	Jan. 21	do.	Allen S. Burrows.....	SE 1/4 SE 1/4	19	57 N	76 W	160.000	1,600.00	do.	(APP. Nov. 26, 1907, C. A. H., list 190.)
.....	88	do.	do.	Katherine S. Burrows.	E 1/4 NW 1/4 E 1/4 SW 1/4	20	57 N	76 W	160.000	1,600.00	do.	(APP. Jan. 22, 1908, C. A. H., list 198.)
123	Feb. 8	Cheyenne, Wyo.....	Louis Rasmussen.....	W 1/4 NW 1/4 W 1/4	SW 1/4	20	57 N	76 W	40.000	800.00	J. D. S., May 10, 1907.	(APP. Oct. 9, 1907, C. A. H., list 182, Pat. No. 2559.)
.....	124	do.	do.	Bertha W. Winchester, now Mrs. T. J. Hansen.	SE 1/4 SW 1/4	32	2 N	88 W	40.000	800.00	do.	(APP. for pat. Sept. 28, 1907, J. F. C., list 180, Pat. 2551.)
.....	5	Mar. 13	Juneau, Alaska.....	Ignatius Mullen.....	Survey 41.				159.201	1,592.01	J. D. S., May 16, 1907.	(APP. Jan. 15, 1908, C. A. H., list 197.)
.....	6	do.	do.	Henry White.....	Survey 44.				159.161	1,591.61	do.	

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Docket No.	Entry No.	Date of entry.	Land office.	Name of entry-man.	Part of section.	Section.	Township.	Range.	Area.	Amount paid to H. E. B.	To whom and when assigned.	Disposition.
7	1907. Mar. 13	Juneau, Alaska.	Henry W. Collins.	Survey 51.					Acres. 159.041	\$1,590.41	J. D. S., May 16, 1907, to C. A. H., July 16, 1907.	
8	do.	do.	Fred C. Davidson.	Survey 53.					159.041	1,590.41	do.	
9	do.	do.	Michael Donsen.	Survey 54.					159.241	1,592.41	do.	
10	do.	do.	Frank F. Johnson.	Survey 59.					159.400	1,594.00	do.	
11	Mar. 20	do.	John G. Cunningham.	Survey 42.					159.201	1,592.01	do.	
12	do.	do.	Clarence Cunningham.	Survey 46.					159.241	1,592.41	do.	
13	Mar. 29	do.	A. B. Campbell.	Survey 49.					159.320	1,593.20	do.	
14	do.	do.	Henry Wick.	Survey 48.					159.241	1,592.41	do.	
15	do.	do.	Hugh B. Wick.	Survey 47.					159.281	1,592.81	do.	
16	Mar. 1	Buffalo, Wyo.	Mattie W. Williams.	S. $\frac{1}{2}$ SW. $\frac{1}{2}$ S. $\frac{1}{2}$ SE. $\frac{1}{2}$.	17	57 N	70 W		160.000	1,600.00	J. D. S., May 22, 1907, to C. A. H., July 16, 1907.	App. May 23, 1908, J. D. S., list 213.
17	do.	do.	Eula W. Kendrick.	W. $\frac{1}{2}$ NE. $\frac{1}{2}$ W. $\frac{1}{2}$ SE. $\frac{1}{2}$.	20	57 N	70 W		160.000	1,600.00	do.	App. for pat. Sept. 23, 1907, J. P. C., list 180, Pat. 2550.
18	Apr. 11	Juneau, Alaska.	Fred H. Mason.	Survey 56.					159.161	1,591.61	J. D. S., May 31, 1907, to C. O. H., July 16, 1907.	App. Oct. 23, 1907, C. O. H., list 184, Pat. No. 2564.
19	do.	do.	William E. Miller.	Survey 61.					159.241	1,592.41	do.	App. Oct. 23, 1907, C. O. H., list 184, Pat. No. 2564.
20	do.	do.	Charles Sweeney.	Survey 40.					159.201	1,592.01	do.	App. Oct. 23, 1907, C. O. H., list 184, Pat. No. 2565.
21	do.	do.	E. C. Ribbet.	Survey 63.					159.201	1,592.01	do.	App. Oct. 23, 1907, C. O. H., list 184, Pat. No. 2565.
22	do.	do.	Fred T. Cushing.	Survey 55.					159.281	1,592.81	do.	App. Oct. 23, 1907, C. A. H., list 184, Pat. No. 2566.
23	do.	do.	Alfred Page.	Survey 64.					158.762	1,587.62	do.	App. Oct. 23, 1907, C. A. H., list 184, Pat. No. 2566.
24	Apr. 23	do.	W. W. Baker.	Survey 38.					159.201	1,592.01	do.	App. Jan. 9, 1908, C. A. H., list 184, Pat. No. 2566.
25	do.	do.	Frederick Bur- bridge.	Survey 43.					159.161	1,591.61	do.	App. Oct. 23, 1907, C. A. H., list 180, Pat. No. 2567.
26	do.	do.	Reginald K. Neill.	Survey 45.					159.241	1,592.41	do.	do.
27	do.	do.	Joseph H. Neill.	Survey 62.					159.320	1,593.20	do.	do.

27	do	John A. Pison	Survey 57			159.121	1,591.21	do	App. Oct. 28, 1907, C. A. H., list 186, Pat. No. 2570.
28	do	Walter D. Moore	Survey 60			159.201	1,592.01	do	App. Oct. 28, 1907, C. A. H., list 186, Pat. No. 2570.
29	do	Arthur D. Jones	Survey 70			159.121	1,591.21	do	To Div. P. 2808, Reld by P. Case in U. 197759.
30	do	Orville D. Jones	Survey 59			159.201	1,592.01	do	C., list 172, 2,583.
1	do	John Moore, sr	(Lots 2, 3, and 4, Lot 1)	30, 32 N 25 E		135.080	2,700.06	do	App. July 18, 1907, J. F. C., list 171.
2	do	George T. Peart	SW 1/4 NE 1/4 SE 1/4 NW 1/4 NE 1/4	30, 32 N 25 E		120.000	2,400.00	do	App. July 30, 1907, J. F. C., list 173.
29	Apr. 15	Minot, N. Dak.	NW 1/4 SE 1/4	17 153 N 89 W		40.000	800.00	J. D. S., June 3, 1907, to J. F. C., July 15, 1907.	App. July 18, 1907, J. F. C., list 171.
34	Mar. 5	Olympia, Wash.	E 1/4 SE 1/4	28 18 N 6 E		80.000	1,600.00	J. D. S., June 5, 1907, to J. F. C., July 15, 1907.	App. July 30, 1907, J. F. C., list 173.
228	Mar. 26	Salt Lake City, Utah.	E 1/4 NE 1/4 and E 1/4 SE 1/4	16 16 S 7 E		160.000	2,400.00	J. D. S., June 7, 1907.	App. Mar. 3, 1908, C. A. H., list 202.
285	Sept. 25	do	S 1/4 SE 1/4	19 15 S 8 E		80.000	4,000.00		App. June 4, 1908, C. A. H., list 215.
31	Oct. 25	Juneau, Alaska.	Survey 68			159.121	1,591.21		(App. June 12, 1908, C. A. H., list 216.
32	do	Frank A. Moore	Survey 39			159.041	1,590.41		App. Apr. 1, 1908, C. A. H., list 206.
33	do	Nelson B. Nelson	Survey 37			159.121	1,591.21		App. Apr. 1, 1908, C. A. H., list 206.
31	Sept. 5	Billings, Mont.	Lots 3, 4, SE 1/4, SW 1/4	18 5 S 22 E		118.180	2,363.60		
32	Sept. 17	do	E 1/4 NW 1/4, lots 1 and 2	30 6 S 23 E		152.650	3,053.00		
33	Sept. 18	do	E 1/4 NE 1/4	31 7 S 21 E		120.000	2,400.00		
34	Sept. 25	do	SE 1/4 SE 1/4	30 8 S 21 E		160.000	3,200.00		
35	Sept. 26	do	N 1/4 NW 1/4, N 1/4 NE 1/4	21 8 S 21 E		160.000	3,200.00		
124	Oct. 22	Santa Fe, N. Mex.	SW 1/4 NW 1/4, NW 1/4 SE 1/4 NE 1/4, NE 1/4 SE 1/4	23 11 N 6 E		160.000	1,600.00		

Mr. BRANDEIS. That statement shows, does it not, Mr. Finney that at the time those claims were ordered clear listed by Commissioner Ballinger no action whatsoever had been taken by Division 1 disposing, so far as that division was concerned, of any one of the 25 claims?

Mr. FINNEY. I think that is correct.

Mr. BRANDEIS. The record will show all of the facts.

Mr. FINNEY. Yes, sir. The record shows the facts.

Mr. BRANDEIS. That, Mr. Chairman, is all I wish to cross-examine Mr. Finney about now. I stated at the outset that there were some questions that I wanted to defer until after Secretary Ballinger had testified.

Mr. GRAHAM. Mr. Finney, the city papers this morning published a statement to the effect that the Secretary of the Interior yesterday made one of the largest withdrawals of land from coal entry since Secretary Hitchcock made the original blanket withdrawals of 1906. Is that item correct?

Mr. FINNEY. Yes; I saw the order before it was signed.

Mr. GRAHAM. The newspaper item goes on to state that the order of withdrawal from coal entry approximates thirteen million and a half acres of land in southeastern Montana believed to contain valuable deposits of coal.

Mr. FINNEY. That statement is correct. The acreage, as I recall was about 13,500,000, withdrawn for classification and valuation it found to be coal land.

Mr. GRAHAM. Of course, there is no new authorization of any kind for making withdrawals by Congress?

Mr. FINNEY. The basis of the withdrawal for coal land, Mr. Graham is the coal-land statute itself, which authorizes the Secretary of the Interior, as we construe it, to fix the price of coal, and the act of 1878, which created the Geological Survey and authorizes the classification of public lands of the United States. I do not understand that Mr. Ballinger or Mr. Garfield, or any of the officers of the department, have ever questioned the right to withdraw coal lands from classification and valuation.

Senator FLETCHER. Have you any personal acquaintance with any of these claimants in the Cunningham group, Mr. Finney?

Mr. FINNEY. I do not think I ever met any one of them except Cunningham himself, whom I met once during the summer of 1908 at Mr. Pierce's office. It was during a visit of Cunningham and Gray to Mr. Pierce, which I think he related in his testimony. Mr. Pierce called me and introduced me to Cunningham and to Gray, but I do not recall that Cunningham had anything to say during the interview, that is, very little if anything.

Senator FLETCHER. Did you know at the time of these investigations by you —

Mr. FINNEY. Will you allow me to further amend my question. And I met Governor Moore in Mr. Pierce's office, as I have previously testified.

The CHAIRMAN. Did you meet any other of the claimants?

Mr. FINNEY. If you will just let me run over the list I will tell you. No, sir; to the best of my knowledge I never met any of them except Mr. Cunningham on that one occasion, and Governor Moore upon the two occasions in Secretary Pierce's office.

Senator FLETCHER. Did you know at that time of Secretary Ballinger's relations to any of these claimants during 1908 and up to the time when you and Mr. Pierce were investigating the question submitted to you?

Mr. FINNEY. Mr. Pierce told me, on the occasion of Mr. Glavis and I being in his office with this memorandum, that Secretary Ballinger had turned the cases over to him for adjudication, because the Secretary had rendered some legal service to the Cunningham claimants while he was out of office.

Senator FLETCHER. Did you know at that time that any of these parties were personal friends of the Secretary?

Mr. FINNEY. No, sir; I do not think so, Senator. I do not recall anything that would have called that to my attention. You see, I had very little to do with these cases prior to the summer of 1909. I simply knew that they were pending in the Land Office, as I have related.

The CHAIRMAN. Mr. Vertrees, have you any further questions to ask?

Mr. VERTREES. Yes, sir. Mr. Finney, it seems that it has been desired that you should not only state facts but give your opinions as to various matters, and that makes it necessary, in the course of my examination, for me also to ask you some questions on that line. You have been asked about Mr. Ballinger's action and his supposed knowledge of what was in the office that he gained while he was commissioner. You have seen the reports of Mr. Love and Mr. Jones, have you not, with reference to the Cunningham claims?

Mr. FINNEY. I have.

Mr. VERTREES. Did those reports, or any other reports that were then on file, report adversely or unfavorably to the Cunningham claims?

Mr. FINNEY. Mr. Love's report was unquestionably favorable, and Mr. Jones's report of August 10, I think, inclosed two affidavits of Mason and Campbell, wherein they undertook to state what their understanding was when those claims were entered. I do not understand that those affidavits militate against the good faith of the entries.

Mr. VERTREES. Are they not favorable, those affidavits?

Mr. FINNEY. They would be favorable rather than unfavorable.

Mr. VERTREES. Is it not true that the only part of the Cunningham claims that were reported adversely were the Ignatius Mullen claim, which he did expressly mention?

Mr. FINNEY. Yes, sir.

Mr. VERTREES. And which was suspended, and which was subsequently cleared by a report of an agent who specially investigated it?

Mr. FINNEY. Yes, sir; Love made a special report on the Mullen entry in November, 1907, I think.

Mr. VERTREES. Was there anything done in the office at the time Mr. Ballinger retired on the 4th of March, 1908, which by any possibility could have been used in any way to the advantage of any of these claimants—any statement of fact in any way which could not have been gotten otherwise?

Mr. FINNEY. Nothing that I know of.

Mr. VERTREES. Or which related in any way to their claim except favorably?

Mr. FINNEY. Nothing that I know of. I did not investigate the record of the Cunningham cases.

Mr. VERTREES. I mean since you examined it.

Mr. FINNEY. No, sir; I find nothing on file that would be of advantage to them.

Mr. VERTREES. What is known as the Cunningham journal, upon which much stress has been laid in some quarters, was found or reported after he retired, was it not?

Mr. FINNEY. The record so states; yes, sir. It was several days after he had retired from the office of commissioner.

Mr. VERTREES. Do you not know as a matter of fact that he left town immediately after he retired from office?

Mr. FINNEY. I know it to be the fact positively that he left town immediately upon the expiration of his term of office on March 3, 1908.

Mr. VERTREES. And returned to Washington?

Mr. FINNEY. He returned to his home in Seattle.

Mr. VERTREES. You have been asked with reference to the statement that Mr. Glavis made to the President, which was, of course, designed to be charges against Mr. Ballinger, without the courage of saying so, as to statements on page 10 and page 61 of Senate Document 248, and I will ask you if that is all; I want to know if, in your opinion, any more could have been said on that subject than is said in those two places, and I will read them to you. I read now from page 10. That statement says:

Mr. Ballinger resigned as commissioner in March, 1908, and returned to Seattle to practice the law. He was retained as the legal representative by the claimants of the Cunningham group, and by a large number of the other claimants.

Mr. Ballinger continued to represent said claimants until he became Secretary.

I now read from page 61 of the same document:

In March, 1908, Mr. Ballinger resigned as commissioner, returned to Seattle, and practiced law. He was retained as legal representative for the Cunningham group and by a large number of others interested in the coal fields. Mr. Ballinger represented such claimants until he became Secretary.

Mr. FINNEY. I can only infer that that was put in there for the purpose of charging that Secretary Ballinger had acted improperly and illegally.

Mr. VERTREES. Now, the point has been made in some questions that there was no statement of the law which that was supposed to violate. I will ask if there is any statement of any kind, in the land laws or otherwise, which the various charges of acts were supposed to violate; and if the report was not made to a person who was supposed to know something, or at least to have a reasonable knowledge, of what the law was?

Mr. FINNEY. The report was made to a person supposed to know something of the law; yes, sir.

Mr. VERTREES. It was to the President of the United States, was it not?

Mr. FINNEY. It was. I do not know what citations of acts were made. I do not remember any citations except to the act of 1908. There may have been others.

Mr. VERTREES. You have been asked a great deal about the Attorney-General. Do you understand that the Attorney-General is under investigation here?

Mr. FINNEY. No, sir; I do not know that the name was mentioned in the resolution.

Mr. VERTREES. Do you understand that those questions have been propounded to elicit the truth or merely as the basis of a slanderous attack upon the Attorney-General by Collier's Weekly or some kindred publication? What do you know about that?

Mr. FINNEY. Of course I can not testify as to the purpose for which the questions were asked.

Mr. VERTREES. You do not know about that?

Mr. FINNEY. I do not know the purpose.

Mr. VERTREES. You have been asked about the Attorney-General's opinion, and your opinion has been very much desired, as I stated, by some. I will ask you if this is not a fact—that the Attorney-General's opinion was based upon a statement made to him some time in the year 1909?

Mr. FINNEY. I do not know whether the statement was made to him or the President.

Mr. VERTREES. That is what I should have said—a statement made to the President—that is to say, upon a state of facts submitted to him then, and have been given, as it would appear, upon the facts which were submitted to him for his opinion then.

Mr. FINNEY. Yes, sir; it was a record made up and submitted to the President.

Mr. VERTREES. Did he assume to give an opinion upon the facts which had been related by the witnesses here in this investigation?

Mr. FINNEY. Oh, no, sir; it was upon the record submitted by Messrs. Ballinger, Dennett, Schwartz, and others to the President, and by the President transmitted to the Attorney-General, as I understand it.

Mr. VERTREES. Now, did not Mr. Glavis, in a telegram that was introduced and submitted to the President, and by him to the Attorney-General, being dated April 11, 1908, state that the evidence would have to be submitted to the grand jury, if at all, during the next month, that is to say, during the month of May, 1908?

Mr. FINNEY. In Mr. Dennett's letter?

Mr. VERTREES. No; Mr. Glavis's telegram to Mr. Dennett.

Mr. FINNEY. Glavis's telegram of April 11, 1908, said that the case must be presented the next month, which would be May, 1908, I assume.

Mr. VERTREES. That is to say, Mr. Glavis himself represented that the case would have to be presented to the grand jury during the month of May, 1908?

Mr. FINNEY. That is the understanding of his telegram.

Mr. VERTREES. That was in the telegram submitted to the President, was it not?

Mr. FINNEY. A copy of it is in Mr. Dennett's letter to the President.

Mr. VERTREES. Did not Mr. Dennett's statement, which was submitted along with the statement of Mr. Ballinger and which was before the President and before the Attorney-General, make the statement that in the year 1909 Mr. Glavis in a conversation with him said that he had not done anything toward the submission of these questions to the grand jury that were therein referred to?

Mr. FINNEY. He said, upon my asking him whether they had been submitted to the grand jury, "No."

Mr. VERTREES. Did not the Attorney-General have those two facts before him, so far as the record shows, when he gave the opinion that

it did not appear that he had taken any steps toward the presentation of these claims?

Mr. FINNEY. I understand the Attorney-General had all those letters before him at the time he rendered this opinion, or summary, or whatever it is.

Mr. VERTREES. And was not the statement of the Attorney-General, not that Mr. Glavis had not done anything in the matter of the inquiries and prosecution of the claims, but—and I quote from page 760 of Senate Document 248:

And he might have added he has never taken any action whatever to bring those criminal prosecutions which he advised the Land Office must be brought before October, 1908, to escape the bar of the statute of limitations—

And is not his statement restricted to those prosecutions and not to those other inquiries?

Mr. FINNEY. That is the statement on page 760 of the Senate document.

Mr. VERTREES. I know that is the statement, but my question is, is it not restricted to those criminal prosecutions and not to this other matter?

Mr. FINNEY. Yes, sir; it seems to relate to the criminal prosecution which he advised the Land Office must be brought before October, 1908.

Mr. VERTREES. Now, I call attention to page 511 of Senate document, and because of the fact that your attention has been called to certain statements of Mr. Schwartz, I will ask you if it does not appear there that Mr. Schwartz makes this statement:

Upon receipt of Mr. Glavis's numerous status reports in March, of which the foregoing Cunningham is a sample, I began to doubt my ability of ever getting a final report out of him.

Mr. FINNEY. Yes, sir; that statement is in Senate document on page 511.

Mr. VERTREES. I will ask you with reference to what has been said as to the testimony, or the evidence before the Attorney-General, as to Glavis's delay, if Mr. Schwartz does not also say in that communication to the President, which was before the Attorney-General, and which appears on page 514 of the same document:

April 27, 1909, Glavis not only refused additional men, but advised that he had no work for the last agent assigned to him, and that he had sent part of his crew to California, from whence they would proceed to the Eastern and Middle States.

Mr. FINNEY. Yes, sir; that statement appears here.

Mr. VERTREES. And still another—look at page 522. Does not Mr. Schwartz say in that same communication, on page 522:

Upon receipt of Glavis's wire of July 16, I made up my mind that he was simply "jockeying," and did not intend to permit the trial of the Cunningham cases or any other Alaska cases. I thereupon sent my wire of July 17 to Mr. Glavis and Mr. Sheridan, leaving Glavis in the case, but giving Sheridan, who is and has proven himself an able trial lawyer, in charge.

Mr. FINNEY. Yes, sir; that statement appears in the record.

Mr. VERTREES. And is it not also true that you heard Mr. Glavis himself testify that notwithstanding the orders to report that he had made up his mind that he was not going to report in any of the Alaska cases until he had completed his investigation of all of them?

Mr. FINNEY. My recollection is that he said it was his idea to report on all of them at the same time.

Mr. BRANDEIS. Mr. Chairman, I thought while Mr. Vertrees is waiting, I thought I would make a suggestion for the benefit of the stenographer. Annex to the letter of Mr. Glavis to the President of August 11, and Mr. Ballinger's letter of September 4, and Mr. Schwartz's letter of September 1, and Mr. Dennett's letter of September 4, and Mr. Pierce's letter of September 1; there was a large number of exhibits, most of which have already been put in evidence and appear in the record. I suggest that instead of reprinting those that there be reprinted only such of the exhibits as do not already appear in the record, and that the clerk of the committee be requested to prepare in connection with those letters a list of exhibits which already appear with a reference to them, so that there may not be an unnecessary duplication in the record.

(The matter referred to by Mr. Brandeis will appear in a subsequent day's proceedings.)

Mr. VERTREES. Mr. Finney, I will ask you to look at page 69 of the Senate document and see if this is not what Mr. Ballinger told Mr. Smith and Mr. Cunningham after his return from Washington when he had filed the affidavit of Mr. Cunningham:

On returning to Seattle, as above stated, I advised Mr. Smith and Mr. Cunningham of the attitude of Secretary Garfield, and told them that Secretary Garfield had intimated to me that they might secure patents to their claims if they were willing to come in under the act of May 28, 1908. I further said to them that they were likely to be cited to show cause why their claims should not be canceled unless they brought themselves under that statute.

Is that not what Mr. Ballinger says, and all he says upon that subject?

Mr. FINNEY. That statement appears on page 69 of the Senate document in his letter. I do not know whether he said anything further on the subject or not.

Mr. VERTREES. Do you recall anything further?

Mr. FINNEY. I do not recall anything further.

Mr. VERTREES. And does not Mr. Schwartz also tell the President, and through him the Attorney-General—the papers being submitted to him as appears on page 502 of the Senate document—the following, and this on the question of why the matter was delayed:

I call your particular attention to second paragraph in my letter of October 7, 1908, to Mr. Glavis, saying Alaska coal-land investigations were temporarily deferred pending legislation in Congress.

I am unable to find such letter or Mr. Glavis's telegram. He refers to both in a nasty way in some thirty status reports on Alaska cases submitted in March, 1909.

By office letter of June 3, 1908, hereinbefore set out, Glavis is sent copy of Alaska coal act of May 28, 1908, with instructions to "so modify scope of your investigation and subsequent reports" in accordance with that act. I do not think he refers to that letter. I suggest you call upon Mr. Glavis for a copy of the letter and his telegram.

It is my opinion that if Glavis was directed to defer the Alaska investigation it was to await issuance of the Alaska coal-land circular which construed the law and because of the condition of work on Oregon land frauds then demanding all the time of his agents. The coal circular was approved July 11, 1908, and probably came from the printers some time later.

September 23, 1908, Glavis wired me to meet him at Helena. His force was not sufficient to cover all his Oregon work then up for trial.

September 29, 1908, I met him at Helena and ordered seven additional men to Portland, and September 30, 1908, Acting Secretary Pierce so advised Department of Justice.

Mr. FINNEY. That appears in the Senate document at page 502.

Mr. VERTREES. Now look at the Senate document on page 50; the letter of October 7, 1908, to Mr. Glavis from Mr. Schwartz, and see if this is not what Mr. Schwartz states there at that time to Mr. Glavis:

Your investigation of these coal entries was temporarily deferred during the pendency in the last Congress of a bill to provide additional laws for acquiring title to Alaska coal lands. Since that time the condition of business in your district has been such that no further investigation has been had of these particular entries.

Mr. FINNEY. That appears there.

Mr. VERTREES. Now, is it not a plain statement there that the reason there had been no further investigation of those particular entries was due to the condition of business in his district and not to the fact that there had been any order of suspension?

Mr. FINNEY. It seemed that Schwartz understood that since the passage of the law the condition had been such that no further investigation had been had.

Mr. VERTREES. And in that connection I call your attention again to what I read before on page 502 in which Mr. Schwartz says:

"His force"—meaning Glavis's force—"was not sufficient to cover all his Oregon work then up for trial."

Mr. FINNEY. Yes, sir.

Mr. VERTREES. Now, taking the two together, are these not plain statements, as you understood them, and understand them, that there was no delay, so far as he understood, because of orders not to proceed?

Mr. FINNEY. This letter would so indicate.

Mr. VERTREES. You were called upon at the last session to produce some papers. I hand you this paper and ask you if that is one that you were called upon to produce.

Mr. FINNEY (examining paper). This is a letter from the Director of the Reclamation Service to the Secretary with reference to retiring those cooperative certificates. It was approved by Secretary Pierce and sent to the comptroller October 20, 1909.

Mr. VERTREES. Mr. Chairman, as it was called for, and as a foundation for the opinion of the comptroller, we desire to put it in evidence.

The CHAIRMAN. It is admitted.

(The paper referred to is as follows:)

DEPARTMENT OF THE INTERIOR,
UNITED STATES RECLAMATION SERVICE,
Washington, D. C., October 18, 1909.

The honorable the SECRETARY OF THE INTERIOR.

SIR: With a view to ascertaining the proper procedure to be followed in carrying out the Attorney-General's suggestion that cash payments be made for the unsettled balance of the work and materials secured by the Reclamation Service under what is known as the "cooperative plan" of construction, advance decisions by the Comptroller of the Treasury are desired upon certain questions involved in the proposition. There are accordingly submitted herewith:

1. Copy of contract dated April 25, 1906, with North Platte Valley Water Users' Association as to certain general matters connected with the construction of the North Platte project.
2. a, b, and c—copies of the public notices on the North Platte project issued under section 4 of the reclamation act of June 17, 1902 (32 Stat., 388).
3. a and b—copies of the forms of water-right applications for use on public and private lands.
4. Copy of contract dated March 3, 1908, with said association providing for certain construction under the "cooperative plan" on the North Platte project.

5. *a* and *b*—copies of the Attorney-General's opinions of May 26 and September 8, 1909, by which it is held that there was no authority for the negotiations of the cooperative contract of March 3, 1908, and similar agreements.

The North Platte case involves every condition that obtains on any project and was the case under special consideration resulting in the Attorney-General's opinion of September 8, 1909.

There are three parties or groups interested in the subject-matter—viz., the United States, the water users' association, and the settlers or water users who will be referred to herein as water-right applicants. Under the public notices, and water right applications filed thereunder, contractual relations exist between the United States and the water right applicants, including an agreement to pay certain charges assessed against their lands, which are referred to herein as water right charges. Under the contract of April 25, 1906, contractual relations exist between the United States and the association, and paragraph 5 provides that this relation shall include a guaranty by the association for the payment to the United States of the water right charges assessed against the lands of its members (water right applicants). In addition to these relations, the cooperative agreement of March 3, 1908, attempted to establish other contractual relations between the United States and the association, whereby the latter undertook to furnish certain necessary work and materials in consideration of securing therefor an equitable apportionment under the provisions of section 4 of the reclamation act for the value received by the United States, by a pro tanto reduction of the water right charges assessed its members, and guaranteed by it.

The association then advertised for and received proposals for the execution of certain construction work, and under the supervision of the service let contracts therefor largely with persons who were water-right applicants. In making their proposals, executing their contracts, and receiving their settlements, these applicants dealt with the officers of the association. In performing the work they received directions as to locality, quantity, and quality of work to be done from the engineers of the service.

The present situation is as follows:

Conformable to the terms of the cooperation agreement, the association has furnished work and material at agreed prices to a total value of \$33,773.84, and for this the service has registered cooperation certificates issued by the association in an equal amount, agreeing thereby to accept these certificates when presented by water-right applicants in pro tanto reduction of the water-right charges assessed against their lands for the costs of building and of operation and maintenance.

These certificates after registration were returned to the association for delivery to the persons who performed the work and furnished the material.

Of the total registered issue of \$33,773.84, certificates amounting to \$12,320.48 had been presented to and accepted by the project engineer prior to September 11, 1909, the date when telegraphic notice of the opinion of September 8, 1909, was received in the project office with orders to cease accepting certificates. The certificates so accepted were thereupon applied in reduction of water-right charges in accordance with the terms of the agreement. There are now outstanding, in the hands of private holders, certificates amounting to \$21,453.36, which sum represents the agreed value to the service for the work secured by it for which a final settlement by application in reduction of charges has not yet been made.

The service does not know by whom these certificates are now held, but they may be, and probably are, in the hands of (*a*) water-right applicants who performed the work represented by their certificates; (*b*) water-right applicants who have purchased certificates for work performed by other persons; and (*c*) persons not water-right applicants who hold certificates for work performed by themselves or others from whom they have been purchased. Under the agreement these certificates would have been receivable by the United States only from water-right applicants.

The particular work represented by any particular certificate for fifty or ten dollars, or some less amount, can not usually be determined from the service records, but the total monthly work for which a monthly issue of certificates was registered can be fully shown. Moreover, the association's records, which, according to article 5 of the agreement of March 3, 1908, are open to the service, show by whom the work and material were supplied, and also what certificates were delivered to each person in temporary settlement therefor.

The Attorney-General having held that cooperative agreements, such as that of March 3, 1908, were unwarranted, and that the outstanding certificates should not be received and applied pro tanto in equitable apportionment of water-right charges, it is necessary to find some means of making settlement for the work secured by the service, and of coincidentally retiring and canceling the outstanding certificates representing such work. That the proper claimant is entitled to a settlement for the value

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of the work and material furnished, and that the agreement of March 3, 1906, and the supplementary agreements and certificates issued thereunder, though unwarranted, are admissible evidence as to such value seems clear.

"Where a parol agreement (of such a nature as to be held void) has been wholly or partially executed and performed on one side, the party performing * * * will be entitled to recover such value as upon an implied contract for a quantum meruit." and this value, in the absence of any other evidence on the subject, may be fairly assumed at what was stipulated for in the parol contract. (*Clark v. United States*, 95 U. S., 539.)

There are sufficient moneys in the reclamation fund from which cash payments can be made, and, therefore, in order to determine to whom such payments can or should be made, decisions are desired upon the following questions:

First. Can cash payments be made to those water-right applicants who hold certificates representing work furnished by them under their contracts with the association, they also being indebted to the United States for water-right charges?

Second. Can cash payments be made to those water-right applicants who hold certificates representing work furnished by other persons under contract with the association, such applicants also being indebted to the United States for water-right charges?

Third. Can cash payments be made to those persons not water-right applicants who hold certificates representing work furnished either by themselves or others under contract with the association?

Fourth. (a) Can cash payments be made to the North Platte Valley Water Users' Association for the value of all unsettled-for work as evidenced by the outstanding certificates, the association also being a guarantor of all water-right charges due to the United States from the water-right applicants? And (b) if so, does any duty devolve upon the service to insure that proper payments are made by the association to the persons who actually performed the work, or to the persons now holding the certificates?

The foregoing questions are all asked with the understanding that any cash payments or other settlements would be made only upon the surrender and cancellation of the outstanding cooperation certificates representing the work, for even though the certificates were registered under a void contract, such cancellation seems desirable to certainly extinguish all claims upon the United States.

Fifth. Assuming that affirmative answers will be given to all or some of the foregoing four questions, will the presentation of uncanceled cooperation certificates, which are known to have been properly issued and registered, and which have not previously been redeemed be sufficient evidence of a right in the holder to receive payment from the United States of the amount represented thereby? It has been pointed out herein that while the entire work furnished by the association can be stated accurately from service records, the work supplied for the association by its several members can not be ascertained except by the use of the records of the association.

Supplementing the foregoing statement of facts, from which we have endeavored to eliminate all argument, it may be useful to add the position heretofore taken as to the settlements under these cooperative agreements.

Assignment of claims against the United States is prohibited by section 3477 Revised Statutes, but it was considered that the claim in favor of the association for the work secured was settled directly with the association by the reduction of water-right charges assessed against the lands of members of the association, for which charges the association was a guarantor.

The set-off of a debt due to the United States against one due by it was considered to be not only a practicable method of settlement, but one recognized as both proper and desirable for every officer to employ in such cases. (As to the legality of such procedure, see 8 Comp. Dec., 26; 12 id., 180; *McKnight v. U. S.*, 13 Ct. Cls., 306; *Bonnafon v. U. S.*, 14 Ct. Cls., 489; *Gratiot v. U. S.*, 15 Pet., 370. As to the desirability of such procedure by administrative officers, see 7 Comp. Dec., 218 and 12 id., 180.)

Respectfully,

F. H. NEWELL,
Director.

OCTOBER 20, 1909.

Respectfully referred to the Comptroller of the Treasury with a request for decisions upon the questions asked.

FRANK PIERCE, *Acting Secretary.*

ECF WCP FWC

Mr. VERTREES. I go now to the coal cases—the Alaskan coal cases of 1904 and 1908, and ask you if this is not true, as you understand, Mr. Finney, that under the act of 1904, if there was an agreement between various locators, a cooperative agreement made prior to the location, I mean prior to entry, at any time, that that would affect it and defeat it.

Mr. FINNEY. Under the act of 1904 the entering into any agreement of the kind you mention prior to final payment of entry would defeat the claim.

Mr. VERTREES. Prior to the completion of the entry?

Mr. FINNEY. Yes, sir.

Mr. VERTREES. But the act of 1908, as construed by Mr. Pierce and the Attorney-General, permits of such agreement and admits that they are legal if made after entry, does it not?

Mr. FINNEY. Mr. Pierce's opinion, and the opinion of the Attorney-General—

Mr. VERTREES. Excuse me, I should say after location instead of entry.

Mr. FINNEY. Mr. Pierce's opinion and the opinion of the Attorney-General permit claims to proceed to patent where the agreements to consolidate were entered into after the date of the location, whether it was prior or subsequent to the act of May, 1908. The pivotal date, under those opinions, and under the memorandum which I myself wrote on the 17th or 18th of May, was the location, because the act of May 28, 1908, required that the location must have been made in good faith and for the interests of the person making it.

Mr. VERTREES. I pass now to another subject, and that is the memorandum prepared by Secretary Ballinger of a proposed bill to authorize temporary withdrawals. I will ask you if that was not prepared and presented upon the understanding, so far as the office was concerned, that Secretary Ballinger had no power to make those withdrawals, and this was to confer upon him the temporary power, or the power to make temporary withdrawals to be continued after Congress had failed to act, if he saw fit to do so?

Mr. FINNEY. It was my view that the Executive had no power whatever to make withdrawals. Secretary Ballinger expressed himself as being very doubtful on the authority to make withdrawals. He expressed that doubt in his annual report, and he expressed himself so to me verbally at the time we were working on the report.

Mr. VERTREES. When you were examined at the last session, you stated that you had written, or rather had drafted for the Secretary, two letters to Governor Moore, and then upon further reflection you stated that you thought you had prepared but one of them. I will ask you if you have examined since and ascertained what the facts are as to that?

Mr. FINNEY. I have examined the original letters of Governor Moore and the original files, copies of which are with the committee, and I find that I prepared for Mr. Ballinger the answer to Governor Moore dated the 24th of May. My initials are on the press copy, but I did not prepare the letter dated May 27 and addressed to Governor Moore. So that I was mistaken when I said I prepared two letters.

Mr. MADISON. Where are those letters? Where can we find them?

Mr. FINNEY. In the record?

Mr. MADISON. Yes.

Mr. VERTREES. The letters to Governor Moore?

Mr. MADISON. Yes. Are they in the list?

Mr. SMYTH. It is there on page 198 of the list.

Mr. VERTREES. Pages 197, 198, and 199.

Senator FLETCHER. Mr. Finney, you said that you had doubts—or you did not believe, rather—that the Secretary had the right or power to make withdrawals and the Secretary doubted his right to do it. In all those questions you have mentioned withdrawals generally. Did you mean all kinds of withdrawals?

Mr. FINNEY. Except in cases where the withdrawals are authorized by law of Congress, or a treaty, or some equivalent authorization.

Mr. VERTREES. In what cases are those, if you recall?

Mr. FINNEY. Where there is such an authorization existing at present?

Mr. VERTREES. Yes.

Mr. FINNEY. Well, one instance is the withdrawal of land for national forests. That was first authorized, as I recall it, by an act passed March 3, 1891, and it is my recollection that there are some very old acts of Congress authorizing the withdrawal of land surrounding salt springs in Ohio, Indiana, and Illinois. There are withdrawals for military posts, and, I am not positive about that, but I think there is legislation which, if not directly, impliedly authorizes the withdrawal of lands for military purposes.

The CHAIRMAN. And for light-houses.

Mr. FINNEY. Yes, sir.

Mr. VERTREES. And coal classification?

Mr. FINNEY. Coal classification, as I mentioned in answer to Mr. Graham's question.

Senator FLETCHER. Mr. Finney, you ought to qualify your answer, probably, to Mr. Vertrees's question with regard to the view that the Secretary did not have the right or power to make withdrawals limited.

Mr. FINNEY. Yes, sir; I was careless in answering. I think the other day I did qualify it by stating that I thought he had not authority except where there was legislative authorization. I thank you for calling my attention to it.

Mr. MADISON. The principal instances, in your judgment, of illegal withdrawals applies to cases of withdrawals for water-power sites. Is that not the fact?

Mr. FINNEY. That is one instance; yes, sir.

Mr. MADISON. That is the principal one?

Mr. FINNEY. Yes, sir; I think that is the leading one. There are laws on the statute books which provide for the use of those sites—that is, the act of 1901—and the lands are also subject to disposal under general laws. It was my view that the Executive did not have the authority to withdraw those lands from the operation of the existing laws passed by Congress; but, as I told you the other day, that was my personal view. Secretary Ballinger seemed to be in some doubt about it.

The CHAIRMAN. Mr. Finney, has not the power been repeatedly exercised by the executive department to withdraw land for Indian reservations?

Mr. FINNEY. Yes, sir; there are a number of Indian reservations which are called executive-order reservations, but I have not run them down. I do not know whether they have their basis in some

law or whether they are just purely arbitrary executive withdrawals.

The CHAIRMAN. And the same in case of military reservations?

Mr. FINNEY. There are a number of military reservations, but I thought that was pursuant to laws authorizing the creation of defenses and military posts, and so forth.

The CHAIRMAN. Under the general war power?

Mr. FINNEY. Yes, sir.

Mr. VERTREES. I would like this memorandum, called a bill—I do not know whether it has been put in, but I would like it to go in the record.

The CHAIRMAN. Very well; you do not care about having it read?

Mr. VERTREES. No, sir; I do not desire to read it.

(The paper referred to is as follows:)

Memorandum prepared by the Secretary of the Interior of proposed bill to authorize the Secretary of the Interior to make temporary withdrawals of areas of public land pending report and recommendation to Congress, or for examination and classification.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and he hereby is, authorized to temporarily withdraw from location, settlement, filing, and entry areas of public lands pending submission to Congress of recommendation as to legislation respecting the lands so withdrawn when in his opinion such a condition or emergency exists as to require the temporary withdrawal of the lands pending congressional consideration: Provided, That the Secretary shall report all withdrawals made under the provisions of this act to Congress at the beginning of its next regular session after date of the withdrawals: And provided further, That when, in the opinion of the Secretary of the Interior, the reason for any such withdrawals has ceased to exist and no action has been taken thereon by Congress, he may restore the same to the operation of the public-land laws.

Sec. 2. That the Secretary of the Interior be, and he hereby is, authorized to temporarily withdraw from location, settlement, filing, and entry areas of public lands for examination and classification to determine their character, use, value, and disposition: Provided, That such examination and classification shall be promptly initiated after withdrawal, be concluded as soon as possible, and the lands when classified be thereafter immediately restored to appropriation and disposition under the laws applicable thereto.

Senator PURCELL. Mr. Finney, just a question—more for my information—it does not appertain to this matter. What is your opinion about the land court? Would you care to express an opinion on that subject? What do you think about it?

Mr. FINNEY. Senator, I think that the most economical and best method, if we are going to have a land court, would be to have it as an appellate court, from the decisions of the Secretary, because there would be a great deal of matter for determination as between the local land office, the General Land Office, and the Department of the Interior.

Senator PURCELL. It would relieve the congestion that is existing now in the Land Department, would it not?

Mr. FINNEY. It would help to some extent, and it would put the final determination of important cases involving legal questions in the way of an impartial tribunal, one that is not at the same time, as is now the case, making investigation.

Senator PURCELL. And it would result in a more speedy determination of the cases, would it not?

Mr. FINNEY. Yes, I think it would, Senator, because in many cases instead of filing motions for review of the departmental decisions

they would file an appeal directly in the land court. At present there are some cases that arise after the Land Office has rendered its final decision and issued the patent. Perhaps a man out on the land, in possession, thinks that patent was wrongfully procured, and he institutes proceedings in the court against the patentee, and in some instances the case may come clear up to the Supreme Court of the United States for decision.

Mr. VERTREES. There is one question which I forgot, which I would like to ask the witness, Mr. Chairman. You spoke of the rules of the Forestry Service providing, among other things, that the Forestry Office could sell timber from lands, as to which the claims were invalid—I believe you made that statement—in the forest reserve where land has been entered and the claimant's claims to the land were not valid.

Mr. FINNEY. I said that was my understanding of it.

Mr. VERTREES. That is your understanding of it. Isn't that one of the difficulties, and a great difficulty, and the cause of great friction, that under these rules the officers have assumed, in most cases, to determine whether or not the claims were valid in the first instance?

Mr. FINNEY. I think that difficulty might arise.

Mr. VERTREES. You do not know how that is?

Mr. FINNEY. I do not know that I can state any specific case.

Mr. VERTREES. That is all, Mr. Finney; stand aside.

(The witness was thereupon excused.)

Mr. VERTREES. Our next witness is Mr.——

The CHAIRMAN. We would like to call Mr. Dudley, who was subpoenaed here, just for a moment.

STATEMENT OF JOHN W. DUDLEY.

Mr. John W. Dudley, being first duly sworn by the chairman, testified as follows:

The CHAIRMAN. Mr. Madison, will you please examine the witness?

Mr. MADISON. You may state your full name.

Mr. DUDLEY. John W. Dudley.

Mr. MADISON. Where do you reside?

Mr. DUDLEY. Juneau, Alaska.

Mr. MADISON. How long have you resided there?

Mr. DUDLEY. Since June, 1902.

Mr. MADISON. What official position, if any, did you hold recently at Juneau?

Mr. DUDLEY. I was register of the United States land office at Juneau until January 5, 1910.

Mr. MADISON. When were you first appointed?

Mr. DUDLEY. To the Juneau office on June 2, 1902.

Mr. MADISON. Are you acquainted with Mr. H. K. Love?

Mr. DUDLEY. Yes, sir; I am.

Mr. MADISON. How long have you been acquainted with him?

Mr. DUDLEY. Since some time in 1904.

Mr. MADISON. Do you remember seeing Mr. Love on the occasion of stopping in Juneau while on his way from Alaska to Washington to testify in this case?

Mr. DUDLEY. I do.

Mr. MADISON. Did you have a conversation with him in Juneau at that time?

Mr. DUDLEY. I did.

Mr. MADISON. Do you remember the details of that conversation?

Mr. DUDLEY. I do not recall all the details, no, sir; I remember generally what I said to him.

Mr. MADISON. Do you remember the conversation in substance?

Mr. DUDLEY. Yes, sir.

Mr. MADISON. Mr. Love appeared before this committee and testified in substance, on page 2529 of our record, as follows:

Mr. LOVE. I never heard of that letter until you read it here yesterday. But let me say on oath that I have known Dudley three or four years, and he is a high-class gentleman, and I think if that letter was read carefully, and if it was submitted to Dudley he could show that he did not mean it the way it reads.

Mr. BRANDEIS. Why was he discharged from office recently?

Mr. LOVE. I do not know. It is none of my business. He told me the other day that Collier's Weekly had intimated that there was five to ten thousand dollars in it for him if he would come down here and testify.

Now, then, I want to ask you in behalf of the committee with regard to this portion of Mr. Love's testimony. "He told me," that is meaning you, you told him "the other day that Collier's Weekly had intimated that there was five to ten thousand dollars in it for him if he would come down here and testify." Now, I will ask you whether or not you made any such statement to Mr. Love?

Mr. DUDLEY. I did not make such a statement, sir.

Mr. MADISON. Did you make any such statement in substance to him?

Mr. DUDLEY. No, sir, I did not. He misunderstood the statement I did make to him, which was simply that I had been approached by an agent of Collier's with an offer to write a story to supplement Mr. Glavis's story for publication in Collier's. That is what I told Mr. Love.

Mr. MADISON. Did you tell him anything else with reference to Collier's Weekly, or about a payment for testifying or furnishing a story, or anything of that kind.

Mr. DUDLEY. No, sir; I said this: That the agent of Collier's had intimated to me that there was five or ten thousand dollars in it for me if I would write the story for them.

Mr. MADISON. Who was this agent for Collier's?

Mr. DUDLEY. Mr. E. C. Russell, the publisher and proprietor of the Daily Alaska Dispatch at Juneau.

Mr. MADISON. State what it was Mr. Russell said to you.

Mr. DUDLEY. As near as I can recollect, he came to me a day or two after my dismissal from the office and he said: Mr. Dudley, there is a chance for you to make five to ten thousand dollars if you go in and write a story for Collier's to supplement that story of Glavis's. I think he used the words "to revise copy," intimating that I was to revise copy of the Glavis articles, and I told him that I did not believe that I had any matter which would be of value to Collier's. He afterwards called me into his office and showed me a telegram which he had received from Mr. Hapgood, as near as I can recollect it, stating that Mr. Hapgood was not able to negotiate without further knowledge but was willing to pay my expenses to New York and return from Juneau.

The CHAIRMAN. Who is Mr. Hapgood?

Mr. DUDLEY. Mr. Hapgood, I understood to be the editor of Collier's Weekly.

Mr. MADISON. You say Mr. Russell was an agent of Collier's?

Mr. DUDLEY. I assumed that he was.

Mr. MADISON. Did you have any reason for such an assumption?

Mr. DUDLEY. Merely his own statement; not directly that he was, but his statement that I could get the contract, or he could get the contract for me.

Mr. MADISON. Well, did he attempt to say to you that he had any authority from Collier's to make such an offer?

Mr. DUDLEY. No, sir; he did not say so, directly.

Mr. MADISON. Well, now, just state to the committee fully everything that occurred in that conversation between you and Mr. Russell.

Mr. DUDLEY. Well, I have stated it as nearly as I can. He came to me a day or two after I was dismissed from the office and he said, "I believe there are five to ten thousand dollars—you can get a contract from Collier's to write a story supplementing Mr. Glavis's, and there is five to ten thousand dollars in it for you." Now, that is the substance of what he said.

The CHAIRMAN. Did he show you that telegram at that time?

Mr. DUDLEY. No, sir.

The CHAIRMAN. When did he show you that?

Mr. DUDLEY. That was a week or ten days later.

The CHAIRMAN. You read the telegram?

Mr. DUDLEY. I saw the telegram sent by Mr. Hapgood.

The CHAIRMAN. Was it signed by the name of Hapgood?

Mr. DUDLEY. Yes, sir; to the best of my recollection.

Mr. MADISON. Now, then, you have given to the committee the substance of that first conversation.

Mr. DUDLEY. Yes, sir.

Mr. MADISON. Now, then, when did you next have any conversation with Mr. Russell about this matter?

Mr. DUDLEY. When he called me into his office and showed me this telegram from Mr. Hapgood.

Mr. MADISON. That was about eight or ten days after you had had your first conversation with him?

Mr. DUDLEY. Yes, sir.

Mr. MADISON. Well, now, what further did he say to you at that time? Give the conversation in full.

Mr. DUDLEY. The conversation was very short, if I remember. I do not recollect it all. He merely showed me that telegram, and I said, "Mr. Russell, I do not believe I know anything that Mr. Hapgood would want to buy."

Mr. MADISON. Well, had he said anything to you about purchasing anything at that time?

Mr. DUDLEY. Purchasing my knowledge in the shape of a story; yes, sir.

Mr. MADISON. I say at this conversation——

Mr. DUDLEY. The first conversation?

Mr. MADISON. No; the second conversation, when he used this expression.

Mr. DUDLEY. No, sir; he showed me that telegram, and I replied in that way and that was all that was ever said about it.

Mr. MADISON. What did you say when he first came to you and told you there would be five to ten thousand dollars in it for you to write the story?

Mr. DUDLEY. I told him that I did not have anything that I thought would be of value to Collier's Weekly.

Mr. MADISON. You told him that at that time?

Mr. DUDLEY. Yes, sir.

Mr. MADISON. Then afterwards he called you in and showed you his telegram from Mr. Hapgood?

Mr. DUDLEY. Yes, sir.

Mr. MADISON. Now, again, give the substance of that telegram from Mr. Hapgood.

Mr. DUDLEY. As near as I can recollect it, it stated:

Can not negotiate without further knowledge. Will pay Dudley's expenses here and back—

And with the signature "Hapgood." I do not know the date—

Mr. MADISON. So now your testimony before this committee is that this man never represented himself as being an agent for Collier's any more than what you have testified to?

Mr. DUDLEY. That is all, sir.

Mr. MADISON. He never stated to you that he represented Collier's?

Mr. DUDLEY. No, sir; he never said so direct.

Mr. MADISON. Never said he had any authority to say this to you from Collier's?

Mr. DUDLEY. No, sir.

Mr. MADISON. He did not say anything to you except what you have now told the committee?

Mr. DUDLEY. That is all, sir.

Mr. MADISON. You have now given all the conversation that passed between you and Mr. Russell?

Mr. DUDLEY. The substance of it; yes, sir.

Mr. MADISON. Well, if there is anything further, anything of any kind the committee wants to know it.

Mr. DUDLEY. What I mean is, I don't remember details of the conversation, but I have given you all the substance of that conversation; as to just the words in which it was expressed, I do not remember.

Mr. MADISON. Was there anything said to you as to whether you would come here to the United States and go to New York, or anything of that kind?

Mr. DUDLEY. By Mr. Russell?

Mr. MADISON. Yes.

Mr. DUDLEY. No, sir.

Mr. MADISON. That wasn't explained to you in any way?

Mr. DUDLEY. Never said anything to me about coming here.

Mr. MADISON. I mean to New York.

Mr. DUDLEY. New York?

Mr. MADISON. Yes.

Mr. DUDLEY. No; only by inference. I inferred from what he said that I was to come to New York so as to write the story there.

Mr. MADISON. That is all that you knew about that.

Mr. DUDLEY. Yes; that is all I knew about that.

Mr. MADISON. In fact, that is the inference you drew from the conversation?

Mr. DUDLEY. That is the inference that I drew; yes, sir.

Mr. MADISON. Now, then, have you read the recent article in Collier's Weekly explaining this transaction and giving the telegram from Mr. Hapgood, etc.?

Mr. DUDLEY. Yes, sir.

Mr. MADISON. Is that the telegram that is published there?

Mr. DUDLEY. Yes, sir; that is the telegram.

Mr. MADISON. That is correct?

Mr. DUDLEY. Yes, sir.

Mr. MADISON. Is there anything in that story that is published in Collier's Weekly that, in your judgment, is not true, or is inconsistent with the happenings in this transaction, as you understand them?

Mr. DUDLEY. No, sir; the telegram is the only original paper that I saw. I did not see the letter that Mr. Russell wrote to Mr. Hapgood, nor did I see Mr. Russell's reply to the telegram.

Mr. MADISON. Where is Mr. Russell now?

Mr. DUDLEY. He is in Juneau, Alaska.

Mr. MADISON. What is his business?

Mr. DUDLEY. He is the publisher of a daily paper there.

Mr. MADISON. The publisher of a newspaper?

Mr. DUDLEY. Yes, sir.

Mr. MADISON. How long has he been there?

Mr. DUDLEY. I could not say certainly; I think ten or twelve years.

Mr. MADISON. Ten or twelve years?

Mr. DUDLEY. Yes, sir.

Mr. MADISON. Do you know where he came from originally?

Mr. DUDLEY. No, sir; I do not.

Mr. MADISON. Know anything about his connections in this country?

Mr. DUDLEY. No; sir; I do not.

Mr. MADISON. You know nothing about that?

Mr. DUDLEY. No; nothing about it, excepting that I knew him there in Juneau.

Mr. MADISON. He is running a small paper, with such circulation as you would have there in that community?

Mr. DUDLEY. Yes, sir.

Mr. MADISON. How large a town is Juneau?

Mr. DUDLEY. Said to be 1,500 inhabitants.

Mr. MADISON. Does the paper circulate outside of the city, do you know?

Mr. DUDLEY. Somewhat in the mining camps, as I understand it.

Mr. MADISON. And has a circulation of how much?

Mr. DUDLEY. Oh, 400 or 500 copies, possibly.

Mr. MADISON. I do not think of anything further.

Senator FLETCHER. Mr. Dudley, let me ask you, did Mr. Russell say anything to you about Collier's wanting you to come here and testify in this case?

Mr. DUDLEY. No, sir; he did not.

Senator FLETCHER. Did you say anything to Mr. Love of that nature, that you could make five to ten thousand dollars—intimate anything of that sort—by coming here and testifying?

Mr. DUDLEY. No, sir; I did not. Later in the conversation with Mr. Love I said to him that I would be very glad to come here and

testify before the committee, that it would afford me an opportunity to visit my old home which I had not seen in twelve years, and that I might be able, at least be able to make an effort, to have my record straightened out in the Interior Department. That was the statement I made to Mr. Love, and the only one.

Senator FLETCHER. When Mr. Love says that you told him, and his suggestion to you was that if you came here to testify in this case there would be something in it for you, he was mistaken about that?

Mr. DUDLEY. He was mistaken, certainly; yes, sir.

Senator FLETCHER. I do not know of anything further.

Senator PURCELL. Did you make any statement to him of what you know?

Mr. DUDLEY. No, sir; I did not discuss any of the facts at all. It was a hurried conversation one evening in the lobby of the hotel.

Senator PURCELL. In the course of the conversation did you not make any charges against anybody or tell him what you knew?

Mr. DUDLEY. No, sir.

Mr. OLMSTED. You say you did say to Mr. Love you would be glad to come here and testify?

Mr. DUDLEY. I made that statement to him; yes, sir.

Mr. OLMSTED. As to what did you expect to testify to—on what subject?

Mr. DUDLEY. As to anything the committee might desire to know that I knew.

Mr. OLMSTED. Do you know anything that we desire to know—that you think we ought to know?

Mr. DUDLEY. I do not recall anything except the routine matters in the Juneau land office.

Mr. OLMSTED. You haven't written any articles for any magazine on the subject, have you?

Mr. DUDLEY. I have not written any articles for any magazine. I have no knowledge that would form the basis for any article which would be of special interest, I think.

Mr. MADISON. Mr. Love also testified before us that you stated in substance that you could not come here and do any good for the so-called prosecution, in effect, but that you would like to come here and testify on the other side for Mr. Ballinger. Did you say that?

Mr. DUDLEY. I did not make any such statement as that; no, sir.

Mr. MADISON. Never made any statement of that kind at all?

Mr. DUDLEY. No, sir.

Mr. MADISON. His statement about that is absolutely incorrect?

Mr. DUDLEY. It is absolutely incorrect; yes, sir.

Mr. MADISON. He also stated—that is, as I recall it—that he would like for you to communicate the fact to Mr. Ballinger—

Mr. GRAHAM. You mean that he asked Love to communicate it.

Mr. MADISON. Yes; that is what I mean. He also testified in substance that you asked him—Love—to communicate the fact to Mr. Ballinger that you would like to come here and testify; did you send any such word as that to the Secretary?

Mr. DUDLEY. I never sent any such word. I said to Mr. Love this—that I would be mighty glad of an opportunity to come here and present my side of the case to Secretary Ballinger and endeavor to prevail upon him to review my case.

Senator FLETCHER. Referring to your own case?

Mr. DUDLEY. I think Mr. Love misunderstood my statement.

Senator FLETCHER. You mean you were referring to your own case?

Mr. DUDLEY. Referring to my dismissal; yes, sir.

Senator FLETCHER. Do you know Mr. Clarence Cunningham?

Mr. DUDLEY. Yes, sir.

Senator FLETCHER. Know any of the other claimants in the Cunningham group?

Mr. DUDLEY. Know several of the claimants personally; several of the agents; in fact, all of the agents, I think; have done business in the Juneau land office, personally, and I am personally acquainted with them.

Senator FLETCHER. Who are they, Mr. Dudley?

Mr. DUDLEY. Well, there are quite a number. Mr. Cunningham is one, Mr. Christopher, Mr. Green, Mr. Shields, Mr. Hunt, Mr. Waddell, and Mr. Watson. Mr. Watson is agent for the coal claimants in the Matanuska region. Then those in the Cook Inlet region—

Senator FLETCHER. You knew them in Juneau, or did you know them before, or just there?

Mr. DUDLEY. No, sir; I knew them through my business relations with them.

Senator FLETCHER. Ever see any of those people up there mentioned in the Cunningham group except Clarence Cunningham?

Mr. DUDLEY. Yes, sir.

Senator FLETCHER. What claimants mentioned in that list of groups?

Mr. DUDLEY. I knew Mr. Ignatius Mullin, of course, personally.

Senator FLETCHER. He was the son of the receiver?

Mr. DUDLEY. He was the son of the receiver; yes, sir.

Senator FLETCHER. And he lived there at Juneau?

Mr. DUDLEY. He lived there for the time. He was employed in the Treadwell mines.

Senator FLETCHER. Do you know any of the others of the thirty-three mentioned?

Mr. DUDLEY. Only met them once or twice, perhaps. I remember meeting Governor Moore upon one occasion for just a few moments' conversation.

Senator FLETCHER. When was that?

Mr. DUDLEY. In the summer of 1908, I think.

Senator FLETCHER. Did you ever go over the territory covered by the Cunningham claims?

Mr. DUDLEY. No, sir.

Mr. GRAHAM. Are you in any way related to the government service now?

Mr. DUDLEY. I am not.

Mr. GRAHAM. Have you any prospects or plans in that direction?

Mr. DUDLEY. I have not.

Mr. GRAHAM. What is your present occupation?

Mr. DUDLEY. I am endeavoring to establish a practice as a land agent before the local office in Juneau; that is, representing clients.

Mr. GRAHAM. Since you have been in the city, have you had any interviews with the Secretary, or any of the persons in charge at the Land Office?

Mr. DUDLEY. I have not.

Mr. GRAHAM. With reference to your own affairs, or anything?

Mr. DUDLEY. I have not; no, sir. I have purposely avoided going near there.

Mr. MADISON. Were you ever over in the coal fields; the Bering coal fields?

Mr. DUDLEY. I never was; no, sir.

Mr. MADISON. Never saw them?

Mr. DUDLEY. No, sir.

Mr. MADISON. Don't know anything about them?

Mr. DUDLEY. No, sir; except from hearsay.

Mr. OLMSTED. Did you ever suggest to Mr. Love that he should say to Mr. Ballinger that you had been offered any inducements to write a story for publication?

Mr. DUDLEY. It might be construed as a suggestion, but I did not intend it in that way. I made the statement to Mr. Love that I had had this offer and that I had refused it, and he evidently thought it an act of friendship if he could place that statement before the Secretary.

Mr. OLMSTED. Well, he says you did not put it before him, but that you suggested that he do so.

Mr. DUDLEY. I do not remember making any such suggestion to him.

Mr. OLMSTED. I think you said you did not write any article for publication.

Mr. DUDLEY. I did not; no, sir. I made a flat refusal to Mr. Russell.

Mr. GRAHAM. Let me read you: "Go and tell Mr. Ballinger that Collier's Weekly has intimated to me that it would be worth five to ten thousand dollars to testify." What did you say to him that he might understand to mean what I have just read to you?

Mr. DUDLEY. He was the one that suggested to me that he might do me——

Mr. GRAHAM. Oh, no.

Mr. DUDLEY. Excuse me, I am getting to that. He was the one who suggested to me that he might do me good, knowing Mr. Ballinger personally, by going and representing that I had received an offer from Collier's magazine and had refused it.

Mr. GRAHAM. Well, did you understand him by that to mean that you could probably make some arrangements with the Secretary by which you could be restored to favor?

Mr. DUDLEY. No, sir.

Mr. GRAHAM. What did you understand him to mean by his statement?

Mr. DUDLEY. Merely that he was anxious to see my record cleared and squared, and that his offer was made in friendship to me.

Mr. GRAHAM. But when he said to you that if the alleged offer of five or ten thousand dollars from Collier's was made and refused by you, if that fact was referred to the Secretary he wanted to draw some inference from it or that the Secretary would do something on account of it.

Mr. DUDLEY. I expect that he did.

Mr. GRAHAM. Have you any opinion as to what he meant by a suggestion?

Mr. DUDLEY. Merely the fact that I had refused to write such a story for Collier's would have its weight with the Secretary——

Mr. BRANDEIS. In restoring you to your former position or something?

Mr. DUDLEY. No; in considering any plea that I might make to the Secretary thereafter.

Mr. GRAHAM. In gaining favor for you in some way—that was his thought?

Mr. DUDLEY. That was his thought of it, probably.

Mr. MADISON. But he states that you said to him to go tell the Secretary.

Mr. DUDLEY. No; he is mistaken, sir.

Mr. MADISON. That is absolutely incorrect?

Mr. DUDLEY. That is absolutely incorrect.

Mr. MADISON. Now, then, when he testified that you told him that you had received an offer of five to ten thousand dollars from Collier's Weekly to testify, that is incorrect, is it not?

Mr. DUDLEY. That is incorrect; yes, sir.

Mr. MADISON. When he testified that you told him to go and tell Mr. Ballinger that you had received this offer to testify, that is also incorrect?

Mr. DUDLEY. That is also incorrect; yes, sir.

Mr. MADISON. The facts are that the intimation that any message should be carried to Mr. Ballinger came from him and not from you!

Mr. DUDLEY. Came from him and not from me.

Mr. MADISON. I think that is all I care to ask Mr. Dudley. Does anybody else want to ask him any questions?

Mr. VERTREES. I would like to ask him a question.

Mr. MADISON. I think counsel ought to be permitted to do so on both sides.

Mr. VERTREES. Your personal relations with Mr. Love were friendly?

Mr. DUDLEY. Entirely so; yes, sir.

Mr. VERTREES. You knew as a fact that Mr. Love had confidence in you as a man, notwithstanding you had been removed from office!

Mr. DUDLEY. Yes, sir.

Mr. VERTREES. He so expressed himself here at this time before this committee, did he not?

Mr. DUDLEY. Yes, sir; I understand so.

Mr. VERTREES. You had been removed from the office of register?

Mr. DUDLEY. Yes, sir.

Mr. VERTREES. When was that?

Mr. DUDLEY. On January 5.

Mr. VERTREES. 1910?

Mr. DUDLEY. Yes, sir.

Mr. VERTREES. Was that by the President or the Secretary?

Mr. DUDLEY. By the President.

Mr. VERTREES. Upon the report of the Secretary of the Interior?

Mr. DUDLEY. Yes, sir.

Mr. VERTREES. And is it not a fact that you felt that really an injustice had been done you?

Mr. DUDLEY. Yes, sir.

Mr. VERTREES. And so expressed yourself to Mr. Love?

Mr. DUDLEY. Yes, sir—well, no, I never expressed that opinion to Mr. Love. He said he felt that I had not had a square deal—that the way he put it to me—and I said to him, "No, well I do not believe I have."

Mr. VERTREES. But you expressed yourself to the same effect?

Mr. DUDLEY. I expressed myself; yes, sir.

Mr. VERTREES. Both of you thought, and he thought, as your friend, that you had not had a square deal, and you thought as a sufferer that you had not had a square deal?

Mr. DUDLEY. I certainly thought so; yes, sir.

Mr. VERTREES. You were talking to a man who was your friend?

Mr. DUDLEY. He was my friend.

Mr. VERTREES. And whom you believed respected you?

Mr. DUDLEY. Yes, sir.

Mr. VERTREES. Now, the conversation was a very brief one, wasn't it, a few minutes in the hotel?

Mr. DUDLEY. Yes, sir; a very brief conversation for a few minutes one evening in the lobby of the hotel.

Mr. VERTREES. And he was on his way here?

Mr. DUDLEY. Yes, sir.

Mr. VERTREES. And you did tell him, did you not, Mr. Dudley, that an agent of Collier's Weekly had offered you five or ten thousand dollars, or had said to you there would be five or ten thousand dollars if it if you would write a certain thing?

Mr. DUDLEY. Yes, sir.

Mr. VERTREES. Now, you have said here that you understood the proposition to be that you should write something supplemental to Glavis's statement?

Mr. DUDLEY. Yes, sir.

Mr. VERTREES. That was the proposition to you?

Mr. DUDLEY. That was the proposition to me.

Mr. VERTREES. You also used the words "to revise," I believe. What did you mean by that?

Mr. DUDLEY. Those words were used by Mr. Russell. He said revise copy and write a story.

Mr. VERTREES. What did you understand by "revise copy?"

Mr. DUDLEY. I understood—

Mr. VERTREES. That you were to write a story and send it to them?

Mr. DUDLEY. No; that I was to take something that Glavis had written and revise it according to my knowledge of the facts.

Mr. VERTREES. Add to it?

Mr. DUDLEY. Add to it or erase.

Mr. VERTREES. Or erase?

Mr. DUDLEY. Or correct. That was my understanding of his intimation.

Mr. VERTREES. That was the way you understood the proposition?

Mr. DUDLEY. Yes, sir.

Mr. VERTREES. And you understood it as representing Collier's Weekly when it came?

Mr. DUDLEY. I supposed he did represent Collier's Weekly.

Mr. VERTREES. He came to you in that attitude and you accepted that way?

Mr. DUDLEY. I accepted it in that attitude, although he never made any direct statement that he was or was not.

Mr. VERTREES. Well, he assumed to say to you that if you did that there would be five or ten thousand dollars in it for you?

Mr. DUDLEY. That was his statement.

Mr. VERTREES. You therefore assumed that he had the right to say that to you?

Mr. DUDLEY. I assumed that he had the right to say that to me.

Mr. VERTREES. How long was that after you were discharged?

Mr. DUDLEY. Oh, a day or so; two or three days; I do not just remember. It was immediately afterwards.

Mr. VERTREES. He had the idea, I suppose, that you were put on and resentful—did he have that idea?

Mr. DUDLEY. I do not know.

Mr. VERTREES. He did not say?

Mr. DUDLEY. He did not say or intimate it.

Mr. VERTREES. Had he come to you before you were discharged for any statement?

Mr. DUDLEY. No, sir.

Mr. VERTREES. But just a few days after you were discharged he came to you with this proposition?

Mr. DUDLEY. That is it; yes, sir.

Mr. VERTREES. Now, was it your purpose and has it been your purpose to try to straighten your record with the Government and register?

Mr. DUDLEY. If I had an opportunity; yes, sir. I proposed to submit my side of the case to the Interior Department.

Mr. VERTREES. Did you not express to Mr. Love that you would like to come down here for that purpose?

Mr. DUDLEY. I certainly did; yes, sir.

Mr. VERTREES. Did you mention the fact that you would be glad to be called down to testify so that it would give you a way to come?

Mr. DUDLEY. That is just what I stated to him.

Mr. MADISON. What was that?

Mr. DUDLEY. I said that I would be glad to be called here, because it would afford me an opportunity to present my side to the committee and visit my old home.

Mr. VERTREES. You did say those two things, that you wanted to visit your old home, and that it would give you an opportunity to clear your record—straighten it out, if possible?

Mr. DUDLEY. Yes, sir; if possible.

Mr. MADISON. You said to tell your side of the matter to the committee?

Mr. DUDLEY. No. Then I did not make my statement clear to you, sir.

Mr. MADISON. You did not mean that? You did not mean to say that you wanted to come here and make any statement of your side to the committee?

Mr. DUDLEY. No, sir.

Mr. MADISON. Maybe I misunderstood you.

Mr. DUDLEY. My idea was that my visit to testify would afford me an opportunity to lay my side of the case before the Interior Department.

Mr. MADISON. You did not mean to say before the committee?

Mr. DUDLEY. No, sir.

Mr. VERTREES. But you did say that you would be glad of the opportunity to come here as a witness to testify in this matter because of these other reasons?

Mr. DUDLEY. Yes, sir.

Mr. VERTREES. You did make that statement to Mr. Love?

Mr. DUDLEY. I did.

Mr. GRAHAM. Was the word "testify" used in this conversation at all?

Mr. DUDLEY. Yes, sir.

Mr. GRAHAM. In your first statement you gave the inference, I think—at least my inference from your statement was—that that word was not used.

Mr. DUDLEY. It was used when I made that statement to Mr. Love that I would be glad to come here and testify.

Mr. GRAHAM. Well, that would imply, would it not, that you knew something to testify?

Mr. DUDLEY. Well, I know of all the routine matters of the Juneau land office.

Mr. GRAHAM. With reference to the Cunningham claims or with reference to any matters before this committee?

Mr. DUDLEY. Yes, sir.

Mr. GRAHAM. If you came before the committee to testify and asked about being brought here to testify, would not that imply that you knew something, and something worth testifying to?

Mr. DUDLEY. Well, I will say in regard to that, that a short time previous to that I saw a copy of Collier's Weekly in which my name was suggested as one of the witnesses that it would be well to call before the committee. I had no especial knowledge, except, as I say, the routine matters pertaining to that Juneau land office.

Mr. GRAHAM. You knew at that time?

Mr. DUDLEY. But that suggested to my mind that possibly I might be called as a witness here upon those routine matters.

Mr. GRAHAM. Isn't it a fact that you do know something to testify to in connection with the investigation going on here?

Mr. DUDLEY. I know all the routine matters in connection with the Cunningham claims; yes, sir. If there is anything the committee desires to know about this, I will be glad to testify.

Mr. GRAHAM. Did you not express yourself locally there as having knowledge which would be detrimental to the Secretary of the Interior if you would tell it, and was not that the reason some one spoke to you about publishing your knowledge?

Mr. DUDLEY. No, sir.

The CHAIRMAN. Answer so that it will go into the record, instead of shaking your head.

Mr. DUDLEY. I said "No, sir."

Mr. GRAHAM. He has answered two ways, Mr. Chairman; they can both go in.

Mr. VERTREES. Mr. Dudley, you were not a man of any means, were you? That is—

Mr. DUDLEY. No, sir; I was dependent upon my salary entirely.

Mr. VERTREES. And were deprived of the office?

Mr. DUDLEY. Yes, sir.

Mr. VERTREES. And you had that conversation with that man, and you told him you knew nothing?

Mr. DUDLEY. I told him I knew nothing which I thought would be of value to Collier's Weekly.

Mr. VERTREES. I will ask you this question: Do you know anything that in any way reflects upon the integrity or official action of Mr. Ballinger?

Mr. DUDLEY. I can not say that I do.

Mr. VERTREES. Anything at all?

Mr. DUDLEY. Nothing at all.

Mr. VERTREES. I will go further—that reflects on Mr. Dennett, the Commissioner of the Land Office?

Mr. DUDLEY. No, sir.

Mr. VERTREES. I will go further than that—that reflects on Mr. Schwartz, the Chief of the Field Service?

Mr. DUDLEY. I do not know anything that would reflect upon him, sir.

Mr. VERTREES. Or upon either of those gentlemen in any way that you know of?

Mr. DUDLEY. No, sir.

Mr. VERTREES. Now, when this man came to you and you gave him to understand that you did not know anything, he still came back to you a second time. When was that second time, and how long after that conversation?

Mr. DUDLEY. About, as I say, a week or eight days.

Mr. VERTREES. And then when he came back in a week or ten days after that, he showed you a telegram from Collier's, or rather a telegram signed "Hapgood."

Mr. DUDLEY. Yes, sir.

Mr. VERTREES. He is a man who has something to do with Collier's paper?

Mr. DUDLEY. Mr. Russell told me that he was the editor.

Mr. VERTREES. And that telegram, as I understand you, said that Hapgood would pay your expenses to New York and back but could not negotiate with you without more knowledge.

Mr. DUDLEY. That was the substance of it; yes, sir.

Mr. VERTREES. And you still told him you knew nothing that would help them in what they were after?

Mr. DUDLEY. That is what I told him.

Mr. VERTREES. You knew they were trying to malign and reflect upon Secretary Ballinger from the previous papers you had seen?

Mr. DUDLEY. That is the common acceptance of their attitude, yes, sir.

Mr. VERTREES. Now, that was what they were after?

Mr. DUDLEY. Yes, sir.

Mr. VERTREES. That was what the five or ten thousand dollars was meant for, to get something that would do that?

Mr. DUDLEY. That is my inference; yes, sir.

Mr. VERTREES. It could not be understood in any other way could it?

Mr. DUDLEY. No, sir; I do not see where it could.

Mr. VERTREES. You told them the first time you knew nothing.

Mr. DUDLEY. Yes, sir.

Mr. VERTREES. And you told him you knew nothing the second time?

Mr. DUDLEY. Yes, sir.

Mr. VERTREES. But they came back the second time?

Mr. DUDLEY. Mr. Russell called me into his office the second time.

Mr. VERTREES. I do not mean that he came back the second time; I mean the second interview.

Mr. DUDLEY. He called me into his office to show me this telegram from Hapgood.

Mr. VERTREES. What passed between you and him when he showed you that telegram?

Mr. DUDLEY. I repeated my statement that I did not know anything of value to Collier's Weekly, and refused to have anything further to do with it.

Mr. VERTREES. What did he say?

Mr. DUDLEY. He did not say anything. I walked out of the office.

Mr. VERTREES. Did he ever tell you that he then telegraphed this to Collier's Weekly [reading]:

Impossible to secure Dudley. Probably other interests intervened.

Mr. DUDLEY. No, sir.

Mr. VERTREES. He never told you that he sent that?

Mr. DUDLEY. No, sir.

Mr. VERTREES. And on the 17th day of January that he sent back that telegram to Collier's.

Mr. DUDLEY. The first time I saw that was in Collier's Weekly a short time ago; a few days ago.

Mr. VERTREES. Now, he stated that probably other interests intervened. Did any other interests intervene or anybody keep you from writing for Collier's?

Mr. DUDLEY. Absolutely none.

Mr. VERTREES. Did I understand you, the sole reason was the one that you have given; namely, that you knew nothing that would reflect upon these people in any way.

Mr. DUDLEY. Nothing that would be of value to Collier's Weekly; that is the way I put it.

Mr. VERTREES. What I mean to get at is, you did know nothing that would reflect upon the integrity or official action of these people I have mentioned.

Mr. DUDLEY. No, sir; I did not.

Mr. VERTREES. You did not?

Mr. DUDLEY. No, sir.

Mr. GRAHAM. Were there any direct charges filed against you?

Mr. DUDLEY. No, sir.

Mr. BRANDEIS. Who is this Mr. Russell whom you have been testifying about?

Mr. DUDLEY. He is the editor and proprietor of a daily paper there in Juneau.

Mr. BRANDEIS. What is his reputation as a man?

Mr. DUDLEY. He is a pretty sharp, shrewd business man; that is his reputation.

Mr. BRANDEIS. Well, now I will read you this letter, which is the one I think referred to by Mr. Madison as having appeared in Collier's:

DAILY ALASKA DISPATCH,
Juneau, Alaska, January 6, 1910.

EDITOR COLLIER'S WEEKLY, New York.

Sir: Mr. John W. Dudley, register of the Juneau land office, which has jurisdiction over all the coal-land claims now being investigated, was removed by order of the President yesterday. Mr. Dudley has the facts regarding coal-land locations in

Alaska, and I intimated to him to-day that perhaps he could secure work with Collier's. He is under some obligation to certain coal-land claimants, but I believe that a good stiff offer would secure him and would place you in a position to open wide the coal-land situation. I would consider it a clinching move on your part.

If you care to secure the services of Mr. Dudley, open the matter with us by wire and I will carry on the negotiations for you. I assure you that if Mr. Dudley contracts with Collier's that he is a man who will give you the inside facts truthfully.

Yours, very truly,

ED. C. RUSSELL.

The CHAIRMAN. What is the date of that letter?

Mr. BRANDEIS. January 6.

The CHAIRMAN. Whom was it addressed to?

Mr. BRANDEIS. Editor of Collier's Weekly, New York. That is the letter that you referred to in answer to Judge Madison that you saw in the Collier issue?

Mr. DUDLEY. Yes, sir.

Mr. BRANDEIS. And the telegram that you say that you saw is this, is it not [reading]:

JANUARY 15, 1910.

RUSSELL

Dispatch, Juneau, Alaska:

Your letter received. Will pay Dudley's expenses here and back. Can not negotiate further without more knowledge. Answer.

(Signed) HAPGOOD.

Mr. DUDLEY. That is the telegram; yes, sir.

Mr. BRANDEIS. And the telegram which Mr. Vertrees asked you about was this telegram of the 17th [reading]:

Editor HAPGOOD,

Collier's Weekly, New York:

Impossible to secure Dudley. Probably other interests intervened.

(Signed) RUSSELL.

Mr. DUDLEY. That is the one I read first in Collier's Weekly a few days ago.

Mr. BRANDEIS. Now, I read another letter of Mr. Russell:

JUNEAU, ALASKA, April 2.

Editor HAPGOOD,

Collier's Weekly, New York.

SIR:—

Mr. VERTREES. Wait one minute. These appear to be letters to Collier's Weekly. Unless this witness knows about them——

Mr. BRANDEIS. I want to see whether he does.

Mr. VERTREES. Very well.

Mr. BRANDEIS (reading):

DAILY ALASKA DISPATCH,
Juneau, Alaska, April 2.

Editor HAPGOOD,

Collier's Weekly, New York.

SIR: I see by the press dispatches of to-day that Mr. Love, U. S. marshal for the third Alaskan judicial division, testified before the Ballinger investigating committee that Mr. John W. Dudley, formerly register of the Juneau land office, told him that he was offered \$10,000 by Collier's to go to Washington and testify against Ballinger. As I was the party making him an offer in behalf of Collier's to go to New York and tell to the Collier Magazine editor the truth about coal land locations in Alaska, I consider it my duty to write you just what took place.

I sent for Mr. Dudley and told him that Collier's—a responsible publication—would pay his expenses to New York and return if he had any information that would be of value to them in exposing coal land frauds in Alaska. I told Mr. Dudley that Collier's wanted facts; that all his statements must be supported by documentary

evidence, and asked him if he had secured any such evidence from the files. He informed me that an agent, purporting to represent Glavis, came to Juneau last summer, and when he left many letters were missing from the Juneau land office files and had never been returned. He told me that he was now denied admission to the files, having been removed as register, and it would be impossible for him to make the trip. Further investigation disclosed that Dudley had been offered a position as manager for one syndicate locating coal lands at Katalla, Alaska, and was therefore anxious to have the coal lands go to patent so he could take his position. Therefore it was evident that he would be of no value to you, and I wired to that effect.

Mr. Dudley was never given to understand that he would get money for attacking any cabinet officer, but his evidence that fraud had been used to secure coal lands in Alaska was solicited. The evidence to be based on truth and documentary evidence.

I am writing you this information for your own use in case Marshal Love or any man attempts to intimate that Collier's were seeking to build up a fight by lies.

Yours, truly,

ED. C. RUSSELL.

Did you see that letter before I read it to you?

Mr. DUDLEY. No, sir.

Mr. BRANDEIS. Did you know anything about the letter?

Mr. DUDLEY. I didn't know anything about the letter.

Mr. BRANDEIS. Mr. Dudley, there was put in evidence in this case, and it appears on page 1379 of the record, a letter of H. K. Love, special agent, to the register and receiver of the Juneau land office, in which he, referring to certain coal-land claims of Warner, O'Neill, Burbidge, W. W. Baker, and Miles C. Moore sends on certain affidavits in which he says, among other things:

In view of the foregoing, and of the fact that the department may wish to make^o investigation of these entries, with others of similar character in Alaska, otherwis^o than through myself, I would respectfully recommend that these cases be forwarded to the General Land Office without entry at this time, that it may not be embarrassed in the premises.

He also says in the same letter:

As all of the Cunningham agency cases are of like character, those of record in your office and now pending before the General Land Office, as well as the above now seeking entry, I would respectfully suggest that this letter be made a part of the record in each case.

It appears in evidence, I think, in this case that the request of Mr. Love, that these be not passed to entry, and also the request that this letter be made a part of the record in each case, was not complied with. Do you remember anything in regard to that?

Mr. DUDLEY. No, sir; I do not.

Mr. BRANDEIS. I will show you the letter itself and see whether you [counsel hands letter to witness].

Mr. DUDLEY. I merely wanted to see the date of it.

Mr. BRANDEIS. August 1, 1907.

Mr. DUDLEY. I remember that such a letter was received. Whether or not action was taken under that letter, as requested, I can not attempt to say.

Mr. BRANDEIS. And you remember nothing whatever in regard to it at the present time?

Mr. DUDLEY. I do not remember whether action was taken or not.

Mr. BRANDEIS. Now, in connection with the investigation that preceded your discharge, you made a certain affidavit relating to your relations with various coal claimants?

Mr. DUDLEY. Yes, sir.

Mr. BRANDEIS. That is, an affidavit which was made and sworn to by you, under date of December 17, 1909?

Mr. DUDLEY. Yes, sir.

Mr. BRANDEIS. And in that affidavit you stated, did you not, the following:

Some time during the summer and fall of 1905 Clarence Cunningham, who claimed at that time to be the representative of 35 coal-land claimants or locators, of whom 33 have since made application for patent from the United States for the lands embraced in their locations, and who has at all times since the year 1905 appeared before the United States land office at Juneau as the representative of these 35 claimants, came to me and wanted me to make out the filing and entry papers for himself and for the entryman whom he claimed to represent. I advised Mr. Cunningham that I could not appear before the office over which I presided as his or anyone else's attorney. He then made the representation that he was unable to find an attorney who was sufficiently acquainted with the Alaska land laws to even prepare the proper forms, and asked me to do that. I told him that his were the first cases of application and that I knew but little more than he did about it; that I was familiar with the forms used in mineral cases and supposed that they might do; that I would prepare a set of such, which he could use as models; that the only form which the department had instructed us to use was the form of affidavit at the time of purchase, to be used as an application form. I told him I could make no charge for such service. He then asked me if I could prepare the forms for each one of his cases outside of my office hours and that he would pay me the current rates for typewriting work of that character; that is, 25 cents a folio, or something of that sort.

To be exact, I don't remember that there was any definite rate named. There was no definite bargain about it, any more than as I have just stated. I think that I prepared the papers for all 35 of the claims, but it may be that I prepared them for only the 33 which were afterwards pressed. In each case I prepared the following papers: Coal-land declaratory statement, consisting of three papers, to wit: The affidavit of the locator, the affidavit of agent as to character of land, and the power of attorney from locator to agent; application for patent; four copies of the notice in each case for publication, posting one claim in land office, and for transmission to the special agent; the affidavit of citizenship; affidavit of character of land and improvements, by agent; a similar affidavit for two witnesses; proof, affidavit, of posting on claim by agent; a similar affidavit for two witnesses, and a form of agreement for publisher. Mr. Cunningham gave me the copies of the field notes, furnished him by the Surveyor-General, from which I wrote a condensed description of the claim in the notices above mentioned. I also furnished him with a form of letter to be addressed by him to each of his claimants transmitting the papers which were necessary for the claimants themselves to sign and execute. I delivered the three papers constituting the declaratory statement to him first, and then delivered the other papers to him in a bunch, but I can not recollect the exact time—it was some time about the dates on which he made application for patent. Cunningham filed his applications for patent between February 21 and March 21, 1906. At the time of a subsequent visit to Juneau, certainly within a year after he had filed these applications, Cunningham paid me \$250. I don't recollect whether it was by check or in cash. Except official communications, I have had no dealings with Cunningham since the date on which he paid me this \$250.

Mr. BRANDEIS. That statement as made by you is correct, I assume?

Mr. DUDLEY. Yes, sir.

Mr. BRANDEIS. I would like to introduce the whole affidavit in evidence. The other parts of the affidavit deal with your action for other people?

Mr. DUDLEY. Yes, sir.

Mr. OLMSTED. That is the affidavit made by the witness?

Mr. BRANDEIS. Yes; but it deals with transactions with other agents.

The CHAIRMAN. Is that the original or a copy?

Mr. BRANDEIS. That is a copy furnished by the Secretary of the Interior in response to a call of the committee.

The CHAIRMAN. It is admitted in evidence.

(The affidavit is as follows:)

UNITED STATES OF AMERICA, *District of Alaska, ss:*

I, John W. Dudley, being first duly sworn, on oath depose and say:

I am the identical John W. Dudley who, on September 16, 1897, was appointed register of the United States land office at Sitka, Alaska, who was appointed register of the United States land office at Juneau, Alaska on June 2, 1902, and who is the present register of the United States land office at Juneau, Alaska. My post-office address is Juneau, Alaska.

I have at all times between June 2, 1902, and this 16th day of December, 1909, been the register of said United States land office at Juneau, Alaska.

Some time during the summer or fall of 1905 Clarence Cunningham, who claimed at that time to be the representative of 35 coal-land claimants or locators, of whom 33 have since made application for patent from the United States for the lands embraced in their locations, and who has at all times since the year 1905 appeared before the United States land office at Juneau as the representative of these 35 claimants, came to me and wanted me to make out the filing and entry papers for himself and for the entrymen whom he claimed to represent. I advised Mr. Cunningham that I could not appear before the office over which I presided as his or anyone's else attorney. He then made the representation that he was unable to find an attorney who was sufficiently acquainted with the Alaska land laws to even prepare the proper forms and asked me to do that. I told him that his were the first cases of application, and that I knew but little more than he did about it; that I was familiar with the forms used in mineral cases and supposed that they might do; that I would prepare a set of such, which he could use as models; that the only form which the department had instructed us to use was the form of affidavit at the time of purchase, to be used as an application form. I told him I could make no charge for such service. He then asked me if I could prepare the forms for each one of his cases outside of my office hours, and that he would pay me the current rates for typewriting work of that character—that is, 25 cents a folio, or something of that sort. To be exact, I don't remember that there was any definite rate named. There was no definite bargain about it, any more than as I have just stated. I think that I prepared the papers for all 35 of the claims, but it may be that I prepared them for only the 33 which were afterwards pressed. In each case I prepared the following papers: Coal-land declaratory statement, consisting of three papers, to wit, the affidavit of the locator, the affidavit of agent as to character of land, and the power of attorney from locator to agent; application for patent; four copies of the notice in each case for publication, posting one claim, and in land office, and for transmission to the special agent; the affidavit of citizenship; affidavit of character of land and improvements, by agent; a similar affidavit for two witnesses; proof, affidavit of posting on claim, by agent; a similar affidavit for two witnesses, and a form of agreement for publisher. Mr. Cunningham gave me the copies of the field notes furnished him by the surveyor-general, from which I wrote a condensed description of the claim in the notices above mentioned. I also furnished him with a form of letter to be addressed by him to each of his claimants, transmitting the papers which were necessary for the claimants themselves to sign and execute. I delivered the three papers constituting the declaratory statement to him first and then delivered the other papers to him in a bunch, but I can not recollect the exact time—it was some time about the dates on which he made application for patent. Cunningham filed his applications for patent between February 21 and March 21, 1906. At the time of a subsequent visit to Juneau, certainly within a year after he had filed these applications, Cunningham paid me \$250. I don't recollect whether it was by check or in cash. Except official communications, I have had no dealings with Cunningham since the date on which he paid me this \$250.

Besides Cunningham, I have prepared forms, notices, and affidavits for the following persons: M. A. Green, W. W. McAlpine, George Irving, M. D. Leehey, Archie W. Shule, A. C. Frost, and Frank Watson, one group of claims; John W. Hartline, Squier Chesum, and James Wardell.

I have also prepared forms, etc., for Robert A. Foster.

For all of the above, except George Irving and M. D. Leehey, the papers prepared by me related to coal claims.

For George Irving, the work I did related to soldiers' additional homestead applications and mineral applications. The work I performed for M. D. Leehey was in connection with soldiers' additional homestead applications.

For Green I did not prepare the declaratory statement papers; but I did prepare forms for the application proofs in the same manner as for Cunningham. There were approximately 89 of these claims, for most of which I prepared these papers, though

there were a few in which one or two of the papers were not prepared by me. Green paid me at the rate of about \$10 a claim.

For McAlpine I prepared approximately 300 declaratory statement papers, consisting of three papers each, as in the Cunningham cases. In seven of these cases I also prepared the full set of application papers. For the others there was a general understanding that I should go ahead and prepare the application papers as fast as they should want to make application. McAlpine paid me at the rate of \$2.50 each for preparing each declaratory statement and at the rate of \$10 each for each application. This agreement was a verbal one between McAlpine and myself, and so far as I know, still exists. I have not had any communication with him for several months past. I have, within the last week, received one case for which he is agent, and conclude from the fact that this case has been sent to me that he still expects me to go on with the work.

For Shields I prepared papers in 40 cases, following the procedure adopted in the Cunningham cases and preparing substantially the same papers. When Shields first made the arrangement with me he said that it was not necessary for me to perform the actual work of making out the forms; that he had an attorney in Seattle who would do that for him; that he was willing to pay me \$10 a claim merely to examine each paper carefully and see that it was right. I told him that such an examination was part of my official duty and that I would not accept money unless I did the work. This conversation took place just as he was leaving on the steamer and it terminated at that point. Shortly thereafter he sent the money to me in the shape of postal orders, \$400, and I immediately set to work and prepared a full set of papers for each claim and mailed them to him. He did not use the forms that I prepared, but used forms prepared by some one else.

For Frost and Watson I prepared a full set of papers for each of 44 cases. These included declaratory statements and the proofs and the application. They paid me at the rate of \$10 a claim. Mr. Frost paid for 5 claims by check. But I don't remember whether Watson's payments were cash or by check. They were made personally. He passed through here and I would have a bunch of them that he wanted ready and when I delivered the papers he would make the payments personally.

For Hartline I prepared the proof forms for the applications for about 15 claims. He also paid me at the rate of \$10 a claim.

For Chezum I prepared the proof forms for the applications for 11 claims. He paid me at the rate of \$10 a claim.

For Wardell I prepared the proof forms for the applications for 4 claims. He paid me at the rate of \$10 a claim.

For Foster I prepared the declaratory statement papers for 35 or 36 claims. He paid me at the rate of \$2.50 a claim.

For the work I did for Irving he paid me \$100, and for the work I did for Leehey he paid me \$100. The former consisted of the applications and proof forms in 9 or 10 soldiers' additional applications and 3 or 4 mineral applications; the latter for 8 or 10 soldiers' additional applications.

All but a very few of these papers were mimeographed by me, except that in the notices for posting and publication and wherever names or other data were supplied to me by the agent, the descriptions of the claims and such names or other data were typewritten upon the mimeographed forms by me.

Nearly all of this work was done at my home, in the evenings or on Sundays, upon a mimeograph that is my own personal property and with a typewriter also my own personal property. All the supplies incident to the preparation of these papers were purchased by me with my own private funds. Whatever work was done in the office was done entirely outside of office hours.

In each and every case I had a distinct understanding to the same effect as that which I had with Mr. Cunningham. My advice and assistance in everything that pertained to the application and its prosecution were theirs without any charge or remuneration of any character whatsoever. This I insisted upon before undertaking to do the clerical work of preparing their forms of proof.

These men all came to me with the statement that they could not find attorneys who knew how to proceed in these matters and solicited my assistance for that reason, or that is the reason they gave me.

I have prepared papers in numerous cases for individuals, where they did not know how to proceed, and have not charged them a cent.

I would like to say that where I did receive a monetary consideration, it was for the clerical work, solely.

I have read the statements in the foregoing five pages of this affidavit; they were written at my dictation, and are true and the whole truth, and nearly exact as my present recollection renders possible.

JOHN W. DUDLEY.

Witness:

WM. K. WEST.

Subscribed and sworn to before me this 17th day of December, A. D. 1909, at Juneau, Alaska.

S. G. HOLZ,

Notary Public in and for the District of Alaska, residing at Juneau.

My commission expires October 7, 1913.

Mr. BRANDEIS. I think that is all I care to ask this witness.

Mr. VERTREES. Just one word. This letter which has been read from Mr. Russell I understand is put in evidence?

Mr. BRANDEIS. Yes, sir.

Mr. VERTREES. You said you knew nothing about this letter at all?

Mr. DUDLEY. No, sir.

Mr. VERTREES. Did Mr. Russell ever come back with any explanation to you?

Mr. DUDLEY. No, sir.

Mr. VERTREES. He never has?

Mr. DUDLEY. Never has.

Mr. VERTREES. Mr. Russell says here that he wired them that your evidence would be of no value. The telegram that has been offered here, that Russell sent, was that it was impossible to secure Dudley; that probably other interests intervened. Do you know where that other telegram is in which he wired Collier's Weekly that you would be of no value, if he sent any such thing?

Mr. DUDLEY. I do not.

Mr. VERTREES. What about your being offered a position as manager for a syndicate locating coal lands at Catala?

Mr. DUDLEY. I never heard of any such offer.

Mr. VERTREES. You never heard of that before?

Mr. DUDLEY. No, sir; Mr. Russell made me an offer very shortly after that to take hold of his paper and run it for him and manage it.

Mr. VERTREES. You would not call that coal lands though?

Mr. DUDLEY. No, sir. I refused that, too.

Mr. VERTREES. Now, Mr. Dudley, they have gone into the facts on the other side that you were removed on the affidavit that has been presented, tending to show that you had done something for which you were removed. I think, Mr. Chairman, it is but just that he be allowed to make a statement as to that matter, touching his removal.

The CHAIRMAN. Let him go on.

Mr. DUDLEY. The only statement—

Mr. VERTREES. Before you get to that I will ask you whether or not there were any forms for coal entries in Alaska prior to April, 1907?

Mr. DUDLEY. No, sir.

Mr. VERTREES. But only a circular was issued at that time?

Mr. DUDLEY. No, sir; there was absolutely no forms at all; they would be all typewritten.

Mr. VERTREES. Now, then, the Chairman gives you permission to make any statement that you desire to make.

Mr. DUDLEY. The subject-matter of that affidavit relates merely to clerical and typewriting work that I did outside of office hours, and I had no dealings with the claimants themselves, except with Mr. Cunningham, and that merely as he would hire a stenographer to do the work.

The CHAIRMAN. Then you prepared the papers in 25 claims you say?

Mr. DUDLEY. In 33, I think; either 33 or 35 of them. The preparation of the notice spoken of there was a matter which involved some knowledge of surveying.

The CHAIRMAN. What fees did you get at the land office for taking down testimony in contests? What is the customary fee—25 cents a folio?

Mr. DUDLEY. No, sir; not now; the fees have been reduced. The fees spoken of there are the current fees for public stenographers doing that work.

The CHAIRMAN. That is the fees for public stenographers?

Mr. DUDLEY. Public stenographers in Juneau.

The CHAIRMAN. And you charged the fee that the stenographers could have gotten for preparing those same papers?

Mr. DUDLEY. Yes, sir; that is all, sir.

The CHAIRMAN. And no more?

Mr. DUDLEY. And no more.

Mr. VERTREES. Is that statement restricted to the Cunningham claimants, or did you do the same thing for many other claimants?

Mr. DUDLEY. I did the same thing for many other claimants.

Mr. VERTREES. How many do you suppose in all?

Mr. DUDLEY. I could not begin to tell you just how many.

Mr. VERTREES. A large number?

Mr. DUDLEY. Quite a large number; yes, sir. The majority of those who appear of record, perhaps, in the office.

Senator FLETCHER. You mean to say that was the cause of your removal?

Mr. DUDLEY. That was the cause, as far as I understand it.

Mr. GRAHAM. Was there anything in your instructions, or in the regulations of your office, forbidding the doing of that work?

Mr. DUDLEY. No, sir; but after it was all done, in November, 1909, a circular was issued by the department prohibiting the preparation of papers by the officers or employees.

Mr. MADISON. Did you quit doing it then?

Mr. DUDLEY. I had stopped before that, sir.

Mr. MADISON. Are you a stenographer and typewriter?

Mr. DUDLEY. I am not a stenographer; I am a typewriter.

Mr. MADISON. Quite expert on the typewriter?

Mr. DUDLEY. Well, I am reasonably proficient.

The CHAIRMAN. Did you write out these yourself?

Mr. DUDLEY. Yes, sir.

The CHAIRMAN. Typewrite them?

Mr. DUDLEY. Yes, sir.

The CHAIRMAN. All of those papers?

Mr. DUDLEY. Yes, sir.

Mr. OLMSTED. Did you typewrite them from a copy, or did you prepare the papers yourself?

Mr. DUDLEY. I prepared a set of model forms and gave them to Mr. Cunningham before he ever spoke of preparing the papers; that

is, I offered to give them to him. I said, "I will prepare for you a model form of each one of the papers."

Mr. OLMSTED. Are they all from the same form?

Mr. DUDLEY. Yes; they all practically follow a set form.

The CHAIRMAN. Except the description of the land, of course.

Mr. DUDLEY. Except the description of the land, and the notice of publication and posting.

The CHAIRMAN. And the names, of course?

Mr. DUDLEY. Yes, sir.

Mr. GRAHAM. Had you specific information that it was for doing that you were separated from the service?

Mr. DUDLEY. Not specific information; no, sir.

Mr. GRAHAM. Do you know from the department exactly what you were separated from the service for?

Mr. DUDLEY. No, sir; not exactly. The order removing me said, "based upon the report by the special agent." I had furnished the special agent with this affidavit, and it was in hopes of obtaining full information from the Interior Department that I said to Mr. Love that I would be very glad to come here as a witness. I wanted to get the full information and meet it if possible.

Mr. GRAHAM. But you have not seen the agent's report, have you?

Mr. DUDLEY. No, sir.

Mr. VERTREES. It is filed with the committee, Mr. Graham.

The CHAIRMAN. What agent reported you, do you know?

Mr. DUDLEY. His name was William K. West.

The CHAIRMAN. Is that all, gentlemen? If that is all, you are discharged, Mr. Dudley.

(The witness was thereupon excused.)

The CHAIRMAN. The record will show the following requests for the production of documents:

161 DEVONSHIRE STREET, BOSTON, MASS.,
April 18, 1910.

Hon. KNUTE NELSON,
Chairman Joint Investigating Committee,
Washington, D. C.

DEAR SIR: Pursuant to the suggestion made at the hearing on April 16 by Senator Flint as acting chairman, I write now to confirm the request specifically made by me on that day to Mr. Finney for the production early this week of certain documents, the documents called for being in large part the documents already called for in my letter of March 31, 1910 (testimony, 2520), namely:

First. The original of the letter of Assistant Commissioner Dennett to chief of Mineral Division N, September 1, 1907, referred to in Mr. Heltman's letter of November 5, 1907. (See testimony, p. 3115.)

Second. All the original papers of any kind in Division N referring to the Cunningham claims, including, among others, any books of record in which data concerning said claims are entered. (See testimony, p. 3117.)

Third. The original letterpress copies of the letters of Secretary Ballinger to Miles C. Moore, dated, respectively, May 24, 1909, and May 27, 1909. (See testimony, p. 3122.)

Fourth. The originals and all original carbon copies of the memoranda of Mr. Finney appearing on page 712, Senate Document 248. (See testimony, p. 3110.)

I specifically requested Mr. Finney to send these papers to the committee as early this week as possible. I should like to examine these papers on the morning of April 20. If they have not been produced by the time this letter reaches you, will you have kindness to call the matter to Mr. Finney's attention immediately, so that the papers may reach the committee some time on the 19th?

Yours, very truly,

LOUIS D. BRANDEIS

3242 INVESTIGATION INTERIOR DEPT. AND BUREAU OF FORESTRY.

THE NEW WILLARD,
Washington, D. C., April 20, 1910.

Hon. KNUTE NELSON,
Chairman Joint Investigating Committee.

DEAR SIR: Please request the Secretary of the Interior to produce to this committee as soon as possible:

1. The letter of Commissioner Dennett to L. R. Glavis referred to in telegram of May 2, 1908. Dennett to Glavis (S. Doc. 228). If original is not in General Land Office, the letter-press copy should be produced, and if that is not immediately available, any other copy.

2. The "report of facts" made by Mr. Glavis referred to in Commissioner Dennett's letter to Glavis of June 3, 1908 (S. Doc. 494).

3. The memorandum prepared by Mr. Murphy in pursuance of request of Mr. Schwartz of July 19, 1909 (S. Doc. 527).

Yours, truly,

LOUIS D. BRANDEIS.

THE NEW WILLARD,
Washington, D. C., Apr. 20, 1910.

Hon. KNUTE NELSON,
Chairman Joint Investigating Committee.

MY DEAR SIR: I respectfully request that the Secretary of the Interior be requested to produce to your committee the following papers:

1. The reports showing carbon copy of letter, Glavis to Schwartz, Feb. 22, 1908, written from San Francisco—referred to in the telegram from Schwarz to Christensen, quoted in Christensen's letter to Schwartz of Feb. 2, 1910 (Test. 2792).

2. The affidavit of Curtis H. Lindley, referred to in his letter of Apr. 8, 1910 (Test. 3048).

3. The 73 reports of L. R. Glavis in the Alaska coal cases bearing date between "March 20 and the middle of April, 1909," referred to in the statement of H. H. Schwartz, Sen. Doc. 233.

4. The report of L. R. Glavis to H. H. Schwartz "of cases pending in this division," referred to in L. R. Glavis's daily report, Dec. 1, 1908 (Test. 873).

Yours, truly,

LOUIS D. BRANDEIS.

WASHINGTON, D. C., April 21, 1910.

Hon. KNUTE NELSON,
Chairman, etc., U. S. Senate.

DEAR SIR: I beg to request that the Secretary of the Interior be directed to forward to the committee all papers relating to the discharge of John W. Dudley from the office of Register of the U. S. Land Office at Juneau, Alaska, including among others affidavits of Arthur R. Bowman.

I shall be glad to have these papers delivered at once, as I understand Mr. Dudley is likely to testify to-morrow.

Very respectfully,

LOUIS D. BRANDEIS.

The CHAIRMAN. The record will also show the following call upon the Attorney-General for the production of certain documents.

UNITED STATES SENATE,
Washington, D. C., April 21, 1910.

Hon. GEORGE W. WICKERSHAM,
Attorney-General of the United States.

MY DEAR MR. ATTORNEY-GENERAL: Will you be kind enough to forward to the Joint Committee of Congress to Investigate the Department of the Interior and the Bureau of Forestry the papers in the files of your department relating to a charge made against United States Marshal Love, of Alaska, with regard to feeding some prisoners.

Mr. Love recently appeared before this committee and testified concerning the Alaska coal cases, and these papers are desired by the committee for consideration in connection with his testimony.

Very respectfully,

KNUTE NELSON,
Chairman Joint Committee.

The CHAIRMAN. The record will also show the following responses to calls of the committee for the production of documents:

THE SECRETARY OF THE INTERIOR,
Washington, April 20, 1910.

Hon. KNUTE NELSON,
Chairman Joint Committee of Congress,
United States Senate.

SIR: In accordance with request of Mr. L. D. Brandeis, pages 3107, 3110, and 3115 of the record of hearing before your committee, and pursuant to your notification of April 20, 1910, I have the honor to advise as follows:

1. The original letters of ex-Governor Miles C. Moore, and the original press copies or carbon copies of my replies thereto were furnished your committee with my letters of February 19 and February 21, 1910.

2. I inclose herewith the original memorandum prepared by Mr. Finney in May, 1909, dealing with the construction of the act of May 28, 1908, also typewritten copy of said memorandum which, from the pencil notations thereon, appears to have been the copy submitted to the Attorney-General on May 26, 1909, with letter of First Assistant Secretary Pierce, and which was presumably returned to the files of this office with the opinion of the Attorney-General dated May 12, 1909. No other copies of said memorandum can be found in this office or in the General Land Office, except two copies which have been prepared to take the place in the files of those now forwarded.

3. I inclose herewith original letter of September 1, 1907, addressed by Mr. Fred Dennett, assistant commissioner, to the chief of Division N, copy of which is printed in the record, page 3115.

4. With respect to the request reported at page 3117 of the record for the production of letters, papers, or reports sent by Division N to Division P with reference to the clear listing or passing to patent of the so-called Cunningham coal entries, I have to advise you that Mr. Finney informs me that he has made a careful search of the records of said division and fails to find any letters, notifications, or papers relating to said subject other than those printed in Senate Document 248, or heretofore furnished the committee. For the further information of the committee, I inclose herewith copies of pages of the "coal entry docket" of the Mineral Division, General Land Office, upon which the said Alaskan coal entries were recorded.

Very respectfully,

R. A. BALLINGER, Secretary.

DEPARTMENT OF THE INTERIOR,
Washington, April 21, 1910.

SIR: Referring to your letter of March 14 and in further compliance with the request as contained in paragraph 2 of the letter of Mr. Brandeis of March 12, 1910, I transmit herewith a list of coal claimants of the Katalla district, with the address of each claimant and the name and address of the agent. It will be noted that this list includes claims additional to the ones sent out in the list submitted on March 17, 1910, which information could only be obtained from the records of the local land office at Juneau, Alaska.

Very respectfully,

R. A. BALLINGER, Secretary.

Hon. KNUTE NELSON,
Chairman Joint Investigating Committee,
United States Senate.

THE SECRETARY OF THE INTERIOR,
Washington, April 21, 1910.

SIR: Referring to the request made over the telephone this afternoon by the secretary to your committee for, "all papers relating to the discharge of John W. Dudley from the office of register of the land office at Juneau, Alaska, including among others affidavit of Arthur R. Bowman, special agent," I inclose herewith departmental file No. 22-37, being charges against Mr. Dudley, and so much of the report of Special Agent West, of the General Land Office, of his investigation of the Juneau (Alaska) office as bears upon the qualifications of Mr. Dudley and his official conduct, and based upon which his separation from the service was recommended. The files of this office fail to show any affidavit by Special Agent Bowman relating to this matter. The papers in the General Land Office are being assembled and will be transmitted as soon as possible. Owing to the apparent urgency of the request for these papers and the circumstances under which made, I transmit the original file of this office, with the suggestion that opportunity be afforded to withdraw these papers in order

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that copies thereof may be made in the event your committee desires to retain the original files for any considerable length of time.

Very respectfully,

R. A. BALLINGER,
Secretary.

HON. KNUTE NELSON,
*Chairman Joint Investigating Committee
United States Senate.*

THE SECRETARY OF THE INTERIOR,
Washington, April 22, 1910.

SIR: Referring to your letter of the 16th instant inviting attention to the letter of February 8, 1910, from Chief of Field Division Christensen to Mr. Schwartz as Chief of the Field Service (printed on page 2314 of the testimony), with particular reference to the inclosures transmitted with said letter, I wish to say that a careful and thorough search of the files of the General Land Office fails to disclose said letter or the inclosures therein referred to. Neither Mr. Dennett nor Mr. Schwartz nor any of the employees through whose hands this letter would have passed in the ordinary routine recall ever having seen it. The copy of the letter of May 13, 1908, from the United States attorney to Special Agent Jones, printed on page 2417 of the testimony, was introduced in connection with the testimony of United States Attorney Todd. I inclose herewith copies of the letters referred to in the communication of Christensen to Schwartz of February 8, which were retained by Mr. Christensen at the time his letter of February 8 was written, as follows: (1) Letter of April 22, 1908, from Special Agent Jones to United States Attorney Todd; (2) letter of April 24, 1908, from Chief of Field Division Glavis to Special Agent Jones; (3) letter of May 14, 1908, from Special Agent Jones to United States Attorney Todd; (4) unsigned copy of letter dated June 8, apparently from Chief of Field Division Glavis to the Commissioner of the General Land Office; (5) copy of letter dated May 18, 1908, from United States Attorney Todd to Chief of Field Division Glavis.

All of the calls heretofore made by your committee are being reviewed and any papers located will be submitted at once.

Very respectfully,

R. A. BALLINGER,
Secretary.

HON. KNUTE NELSON,
*Chairman Joint Investigating Committee,
Senate Office Building, Washington, D. C.*

THE SECRETARY OF THE INTERIOR,
Washington, April 22, 1910.

SIR: Replying to your letter of the 20th instant, I beg to say with reference to paragraph one of the letter of Mr. Brandeis that the letter referred to in the telegram of May 8, 1908, to Mr. Glavis, which telegram appears in the Senate document on page 228, was merged in the general instructions to chiefs of field divisions, dated May 12, 1908, and signed by Secretary Garfield, which letter also appears on page 228 of the Senate document.

As to paragraph two, the "report of facts" made by Mr. Glavis and referred to in Commissioner Dennett's letter of June 3, 1908, to Mr. Glavis, which letter appears on page 494 of the Senate document, is not a single report on the general situation, but comprises such matters as Mr. Glavis reported to the chief of field service, Schwartz, in November, 1907, and in subsequent correspondence up to and including the submission to the Commissioner of the General Land Office of the Cunningham journal.

As regards the memorandum prepared by Mr. Murphy, referred to in paragraph three, I transmit herewith said original memorandum, and while unsigned is identified by the writer's initials in the upper left-hand corner of the first page thereof. A copy of this memorandum, furnished the committee by the Forest Service, appears on page 527 of the Senate document.

Very respectfully,

R. A. BALLINGER,
Secretary.

HON. KNUTE NELSON,
*Chairman Joint Investigating Committee,
Senate Office Building, Washington, D. C.*

THE CHAIRMAN. The committee will stand adjourned until tomorrow at 10 o'clock.

(Thereupon, at 5.15 p. m., the committee adjourned until Saturday morning, April 23, 1910, at 10 o'clock.)

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NO. 32

HEARINGS BEFORE THE COMMITTEE TO INVESTIGATE THE
INTERIOR DEPARTMENT AND FORESTRY SERVICE

APRIL 23, 1910

ROOM 207, SENATE OFFICE BUILDING
WASHINGTON, D. C.

MEMBERS OF THE JOINT COMMITTEE.

KNUTE NELSON, Minnesota, Chairman.

SAMUEL W. McCALL, Massachusetts, Vice-Chairman.

FRANK P. FLINT, California.

GEORGE SUTHERLAND, Utah.

ELIHU ROOT, New York.

WILLIAM E. PURCELL, North Dakota.

DUNCAN U. FLETCHER, Florida.

MARLIN E. OLMSTED, Pennsylvania.

EDWIN DENBY, Michigan.

E. H. MADISON, Kansas.

OLLIE M. JAMES, Kentucky.

JAMES M. GRAHAM, Illinois.

PAUL SLEMAN, Secretary.

SATURDAY, APRIL 23, 1910.

JOINT COMMITTEE TO INVESTIGATE THE
INTERIOR DEPARTMENT AND FORESTRY SERVICE,
Washington, D. C., April 23, 1910.

The Joint Committee to Investigate the Interior Department and Forestry Service met pursuant to adjournment at 10 a. m.

There were present as counsel: Mr. Louis D. Brandeis, representing Mr. Louis R. Glavis; Mr. George Wharton Pepper and Mr. Nathan A. Smyth, representing Mr. Gifford Pinchot; Mr. John J. Vertrees and Carl Rasch, representing Secretary Ballinger.

The CHAIRMAN. The committee will please come to order. A quorum is present. I desire to announce to counsel and the witnesses that the committee have decided to hold three meetings next week, Thursday, Friday, and Saturday.

The record will show the following withdrawal bills referred to in the testimony of April 22, together with committee reports and substitute bills:

[S. 5485. Sixty-first Congress, second session. In the Senate of the United States. January 18, 1910. Mr. Nelson introduced the following bill; which was read twice and referred to the Committee on Public Lands.]

A BILL To authorize the Secretary of the Interior to make temporary withdrawals of areas of public land pending report and recommendation to Congress, or for examination and classification.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and he hereby is, authorized to temporarily withdraw from location, settlement, filing, and entry areas of public lands pending submission to Congress of recommendation as to legislation respecting the lands so withdrawn when in his opinion such a condition or emergency exists as to require the temporary withdrawal of the lands pending congressional consideration: Provided, That the Secretary shall report all withdrawals made under the provisions of this act to Congress at the beginning of its next regular session after date of the withdrawals: And provided further, That when, in the opinion of the Secretary of the Interior, the reason for any such withdrawals has ceased to exist and no action has been taken thereon by Congress, he may restore the same to the operation of the public-land laws.

SEC. 2. That the Secretary of the Interior be, and he hereby is, authorized to temporarily withdraw from location, settlement, filing, and entry areas of public lands for examination and classification to determine their character, use, value, and disposition: *Provided, That such examination and classification shall be promptly initiated after withdrawal, be concluded as soon as possible, and the lands when classified be thereafter immediately restored to appropriation and disposition under the laws applicable thereto.*

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[Calendar No. 183. S. 5485. Sixty-first Congress, second session. [Report No. 171.] In the Senate of the United States. January 18, 1910. Mr. Nelson introduced the following bill; which was read twice and referred to the Committee on Public Lands. February 3, 1910. Reported by Mr. Nelson, with amendments.]

[Strike out all after the enacting clause and insert the part printed in italics.]

April 5, this bill was recommitted to the committee.

A BILL To authorize the Secretary of the Interior to make temporary withdrawals of areas of public land pending report and recommendation to Congress, or for examination and classification.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and he hereby is, authorized to temporarily withdraw from location, settlement, filing, and entry areas of public lands pending submission to Congress of recommendation as to legislation respecting the lands so withdrawn when in his opinion such a condition or emergency exists as to require the temporary withdrawal of the lands pending congressional consideration: Provided, That the Secretary shall report all withdrawals made under the provisions of this act to Congress at the beginning of its next regular session after date of the withdrawals: And provided further, That when, in the opinion of the Secretary of the Interior, the reason for any such withdrawals has ceased to exist and no action has been taken thereon by Congress, he may restore the same to the operation of the public land laws.

Sec. 2. That the Secretary of the Interior be, and he hereby is, authorized to temporarily withdraw from location, settlement, filing, and entry areas of public lands for examination and classification to determine their character, use, value, and disposition: Provided, That such examination and classification shall be promptly initiated after withdrawal, be concluded as soon as possible, and the lands when classified be thereafter immediately restored to appropriation and disposition under the laws applicable thereto.

That the President may, at any time in his discretion, withdraw from settlement, location, sale, or entry any of the public lands of the United States, and reserve the same for forestry, water-power sites, irrigation, classification of lands, or other public purposes, to be specified in the orders of withdrawals, and such withdrawals and reservations shall remain in force until revoked by him or by an act of Congress. The Secretary of the Interior shall report all such withdrawals to Congress at the beginning of its next regular session after the date of the withdrawals.

Amend the title so as to read: "A bill to authorize the President of the United States to make withdrawals of public lands in certain cases."

[Senate Report No. 171, Sixty-first Congress, second session.]

Mr. Nelson, from the Committee on Public Lands, submitted the following report (to accompany S. 5485):

The Committee on Public Lands, to whom was referred the bill (S. 5485) to authorize the Secretary of the Interior to make temporary withdrawals of areas of public land pending report and recommendation to Congress, or for examination and classification, having had the same under consideration, report it back recommending passage of the following amendment as a substitute for the entire bill. Strike out all after the enacting clause and insert the following:

"That the President may, at any time in his discretion, withdraw from settlement, location, sale, or entry, any of the public lands of the United States and reserve the same for forestry, water-power sites, irrigation, classification of lands, or other public purposes, to be specified in the orders of withdrawals, and such withdrawals and reservations shall remain in force until revoked by him or by an act of Congress. The Secretary of the Interior shall report all such withdrawals to Congress at the beginning of its next regular session after the date of the withdrawals."

The power conferred upon the President by the proposed substitute is a power that he has possessed and exercised almost from the inception of our public-land system and is a power that he still possesses and exercises.

The power of the President to reserve public lands from sale and entry rests upon various statutes, upon numerous decisions of the courts, and upon long-established and long-recognized usage.

The preemption act of 1830 (4 Stat., 421) provided that the privilege of preemption should not extend to any land "which is reserved from sale by act of Congress or by order of the President." This clearly gives the President the power, on his own motion, to make the reservation and leaves it in his discretion to exercise the power, and the power may be exercised through an executive department. In such cases it is deemed the act of the President.

In the case of *Wilcox v. Jackson* (13 Peters, 498) the reservation was made by the Commissioner of the General Land Office upon the request of the Secretary of War. This was held to be valid and to be the act of the President. (See p. 513.) In the case of *the United States v. Stone* (2 Wall., 525) this view is sustained.

The general preemption law of 1841 (5 Stat., 456), which remained in force until 1891—about fifty years in all—provided that—

"no lands included in any reservation by any treaty, law, or proclamation of the President * * * shall be liable to entry under * * * the provisions of this act."

In the *Des Moines* land grant act (11 Stat., 9) the reservation covered land—

"reserved * * * by any act of Congress or in any other manner by competent authority for * * * aiding in internal improvements, or any other object whatsoever."

The reservation in this case was made in the first instance by the Secretary of the Treasury while he had charge of the public lands, and afterwards by the Secretary of the Interior after the public lands were placed under his jurisdiction; and the reservation made by these officials was held to be the act of the President and to be done by "competent authority." (*Wolcott v. Des Moines*, 5 Wall., 681.)

In the act providing for the survey of public lands in California (10 Stat., 246) are found the words "or reserved by competent authority," and this "authority" is held to be the President. (*Grisar v. McDowell*, 6 Wall., 363.)

In the case of *Grisar v. McDowell*, cited above, the point was raised that no reservation could be made except under a direct sanction of an act of Congress, and that the President did not possess the power to make such reservation. In reply to this objection the Supreme Court makes the following response:

"But further than this, from an early period in the history of the Government it has been the practice of the President to order, from time to time, as the exigencies of the public service required, parcels of land belonging to the United States to be reserved from sale and set apart for public uses.

"The authority of the President in this respect is recognized in numerous acts of Congress. Thus, in the preemption act of May 29, 1830, it is provided that the right of preemption contemplated by the act shall not 'extend to any land which is reserved from sale by act of Congress, or by order of the President, or which may have been appropriated for any purpose whatever.' Again, in the preemption act of September 4, 1841, 'lands included in any reservation by any treaty, law, or proclamation of the President of the United States, or reserved for salines or for other purposes,' are exempted from entry under this act. So by the act of March 3, 1853, providing for the survey of public lands in California, and extending the preemption system to them, it is declared that all public lands in that State shall be subject to preemption, and offered at public sale, with certain specific exceptions, and, among others, 'of lands appropriated under the authority of this act, or reserved by competent authority.' The provisions in the acts of 1830 and 1841 show very clearly that by 'competent authority' is meant the authority of the President and officers acting under his directions."

Attorney-General Miller, in an opinion delivered by him (19 Op. Attys. Gen., 373), declared, when it was objected that certain statutes cited did not authorize the reservation in question to be made:

"To this I answer that in my opinion the validity of the executive order of August 5, 1875, and that of February 19, 1877, to which it was supplemental, rest not on that

statute, but on a long-established and long-recognized power in the President to withhold from sale or settlement, at discretion, such parts of the national domain, open to entry and settlement, as he may deem proper."

While no express or direct statutory power has been given the President to create Indian reservations by mere executive orders, yet such power has been repeatedly expressed by the President, and it has been held that such power has been rightfully and lawfully exercised. (See opinion of Attorney-General Brewster, 17 Op. Attys. Gen., p. 258.) In this opinion are cited many instances of the creation of Indian reservations by executive orders.

The case of the *United States v. Payne* (2 McCrary's Circuit Court Reports, 289) is in harmony with and upholds the power of the President in such cases.

In the matter of our mining laws, section 2319 of the Revised Statutes of the United States provides that—

"All valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and purchase and the lands in which they are found to occupation and purchase * * *"

In the case of *Gibson v. Anderson* (United States Circuit Court of Appeals Report, vol. 65, 277) it was held that the proclamation of the President reserving certain lands for the use of the Indians had the effect of withdrawing the land reserved from the operation of the mining law quoted above. The court declares (p. 288):

"There can be no doubt that such reservation by proclamation of the Executive stands upon the same plane as a reservation made by treaty or by act of Congress."

The executive power of making reservations, conferred by the preemption law of 1841, also inheres and appertains to the homestead law.

Section 2289 of the Revised Statutes of the United States provides that—

"every person * * * shall be entitled to enter one quarter section or a less quantity of unappropriated public lands, upon which such person may have filed a preemption claim, or which may, at the time the application is made, be subject to preemption at one dollar and twenty-five cents per acre; or eighty acres or less * * * at two dollars and fifty cents per acre."

This section, in effect, excludes from the operation of the homestead law the same class of lands that were excluded from the operation of the preemption law of 1841, to wit, "lands included in any reservation by any treaty, law, or proclamation of the President for any purpose," so that the President has the same power of making reservation in the case of land subject to homestead entry as he had in the case of lands subject to preemption entry.

The phrase "public lands," found in our various land laws, is used in our legislation to describe such lands as are subject to sale or other disposition under general law and not to lands that have been reserved by treaty, act of Congress, or executive proclamation. (*Newhall v. Sanger*, 92 U. S., 761.)

The timber-culture laws of 1874 and 1878, which remained in force until 1891, were limited to "public lands of the United States;" in other words, that law did not allow other than "public lands" to be secured under it, and lands reserved by the President by proclamation or executive order were not such "public lands."

The timber and stone act of 1878 only applied to "unappropriated, uninhabited, and unreserved nonmineral land of the United States * * *"

See also the following cases in support of the executive power of withdrawal and reservation: *Wolsey v. Chapman* (101 U. S., 755), *Spencer v. McDougal* (159 U. S., 62).

The statutes cited, as well as the decisions of the court above referred to, and other decisions that might be cited, as well as the opinions of the Attorneys-General, all go to show that the President of the United States has the inherent power to reserve for public purposes lands of the United States from location, sale, or entry.

It is only lately that this power has been doubted and questioned, and the object of the proposed substitute is to make it definite and clear beyond all dispute that the President possesses this power of withdrawal. The only change in existing law, as interpreted by the courts, is that part of the proposed substitute which provides that the "Secretary of the Interior shall report all such withdrawals to Congress at the beginning of its next regular session after the date of withdrawals."

Authorized to be reported:

[S. 7765. Sixty-first Congress, second session. In the Senate of the United States. April 18, 1910. Mr. Nelson introduced the following bill; which was read twice and referred to the Committee on Public Lands.]

A BILL To authorize the President to make withdrawals of areas of public land.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President may, at any time in his discretion, temporarily withdraw from settlement, location, sale, or entry any of the public lands of the United States and reserve the same for water-power sites, irrigation, classification of lands, or other public purposes, to be specified in the orders of withdrawals, and such withdrawals and reservations shall remain in force until revoked by him or by an act of Congress: *Provided,* That all lands withdrawn under the provisions of this act shall at all times be open to exploration, discovery, occupation, and purchase, under the mining laws of the United States, so far as the same apply to minerals other than coal, oil, gas, and phosphates. The Secretary of the Interior shall report all such withdrawals to Congress at the beginning of its next regular session after the date of the withdrawals.

[H. R. 24070. Sixty-first Congress, second session. In the House of Representatives. April 5, 1910. Mr. Packery introduced the following bill; which was referred to the Committee on the Public Lands and ordered to be printed.]

A BILL To authorize the President of the United States to make withdrawals of public lands in certain cases.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President be, and he hereby is, authorized to withdraw from location, settlement, filing, and entry areas of public lands in the United States and the District of Alaska for public uses or for examination and classification to determine their character and value: *Provided,* That the lands when classified shall be thereafter restored to appropriation and disposition under the laws applicable thereto; and the President is further authorized to withdraw, for other purposes, from location, settlement, filing, and entry areas of public lands in the United States and District of Alaska, whether classified or not, and submit to Congress recommendations as to legislation respecting the land so withdrawn.

SEC. 2. That the Secretary of the Interior shall report all withdrawals made under the provisions of this act to Congress at the beginning of its next regular session after date of the withdrawals, specifying the purposes of each thereof. All such withdrawals heretofore made and now existing are hereby ratified and confirmed as if originally made under this act. All withdrawals shall remain in force until revoked by the President or by Congress, or the lands restored as hereinbefore provided.

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[Union Calendar No. 188. H. R. 24070. Sixty-first Congress, second session. [Report No. 983.] In the House of Representatives. April 6, 1910. Mr. Pickett introduced the following bill; which was referred to the Committee on the Public Lands and ordered to be printed. April 11, 1910. Reported with amendments, committed to the Committee of the Whole House on the state of the Union, and ordered to be printed.]

[Omit the part struck through and insert the part printed in italics.]

A BILL To authorize the President of the United States to make withdrawals of public lands in certain cases.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President be, and he hereby is, authorized to withdraw from location, settlement, filing, and entry areas of public lands in the United States and the District of Alaska for public uses or for examination and classification to determine their character and value: *Provided*, That the lands when classified shall be thereafter restored to appropriation and disposition under the laws applicable thereto; and the President is further authorized, *when in his judgment public interest requires it*, to withdraw, ~~for other purposes~~, from location, settlement, filing, and entry areas of public lands in the United States and District of Alaska, whether classified or not, and submit to Congress recommendations as to legislation respecting the land so withdrawn.

SEC. 2. That the Secretary of the Interior shall report all withdrawals made under the provisions of this act to Congress at the beginning of its next regular session after date of the withdrawals, specifying the purposes of each thereof. All such withdrawals heretofore made and now existing are hereby ratified and confirmed as if originally made under this act. *That such withdrawals shall not affect the legal rights of any settler or entryman initiated prior to such withdrawal.* All withdrawals shall remain in force until revoked by the President or by Congress, ~~or the land restored as heretofore provided.~~ *Upon restoration of any such lands in the United States the equitable rights shall attach of any bona fide claimant who prior to such withdrawal initiated a claim thereto and made valuable improvements thereon.*

[Union Calendar No. 188. House Report No 983, Sixty-first Congress, second session.]

Mr. Pickett, from the Committee on the Public Lands, submitted the following report (to accompany H. R. 24070):

The Committee on the Public Lands, having had under consideration the bill (H. R. 24070) to authorize the President of the United States to make withdrawals of public lands in certain cases, report the same back with the following amendments:

Insert after the word "authorized," in line 10, page 1, the following: "when in his judgment public interest requires it."

Strike out, in lines 10 and 11, page 1, the words "for other purposes."

Insert after the word "act," in line 7, page 2, the following:

"That such withdrawals shall not affect the legal rights of any settler or entryman initiated prior to such withdrawals."

Strike out the comma after the word "Congress," in line 8, page 2, and insert in lieu thereof a period.

Strike out all after the word "Congress," in lines 8 and 9, page 2, and insert the following:

"Upon restoration of any such lands in the United States, the equitable rights shall attach of any bona fide claimant who prior to such withdrawal initiated a claim thereto and made valuable improvements thereon."

And as thus amended recommend that the bill do pass.

The bill grants to the President authority to withdraw from location, settlement, filing, and entry public lands, first, for public uses; second, for examination and classification to aid in administering the existing law; third, to conserve the public domain

pending legislative action when, in the judgment of the President, public interest requires it.

The President has authority to withdraw lands for certain purposes, but there is a difference of opinion as to the extent of that authority. Many claim this authority is as broad as that provided for in this bill; others contend to the contrary. No statute has been found expressly conferring this authority, and the extent thereof has not been settled by the Supreme Court.

During the past few years large areas of the public domain have been withdrawn for classification and submission to Congress of recommendations of legislation relative thereto with a view of protecting and conserving public interest in valuable oil, coal, and other mineral land, water-power sites, etc. Since some of the withdrawals attempts have been made by different parties to appropriate land so withdrawn, upon the theory that the withdrawals were unauthorized. Hence the provision in the bill ratifying and confirming prior withdrawals. In view of the conflicting opinions that exist as to the authority for past and future withdrawals, it is deemed necessary to adopt a measure that will clearly define the extent of such authority. The importance of this legislation in aid of conserving such resources for the people is too manifest to require comment.

VIEWS OF THE MINORITY.

The undersigned members of the Committee on the Public Lands do not concur in the report on H. R. 24070, entitled "A bill to authorize the President of the United States to make withdrawals of public lands in certain cases."

The bill as reported is unsatisfactory, and is in our judgment a mere makeshift to be labeled "conservation," while having none of the principles of true conservation. It merely expressly authorizes the Executive to make withdrawals of areas of public lands and does not provide for investigations and classifications to be speedily made, which in our judgment is one of the primary steps to be taken before Congress can intelligently revise existing laws or enact new laws which will conserve our national resources and prevent their acquisition by fraudulent practices, which in many instances have unquestionably prevailed.

The absurdity of the clause in the bill as reported, nominally ratifying all existing withdrawals heretofore made, but excepting from its operation the legal rights of any settler or entryman initiated prior to any such withdrawal, and providing that equitable rights shall attach of any bona fide claimant who prior to any such withdrawal initiated a claim and made improvements on it, is manifest. In our judgment the intelligent course to be pursued with reference to withdrawals existing is that the same shall be reported to Congress immediately with full information concerning them. Congress can then ratify the same, except in cases where the withdrawals were improperly or improvidently made, and as to them, if there be such cases, it may take such action as it believes wise and just after full information.

It is difficult to understand how gentlemen who in Congress and elsewhere have denounced the action of the Executive for making what they term indiscriminate and needless withdrawals of agricultural lands are induced to support a bill containing a provision ratifying such withdrawals if, in fact, it is intended to accomplish that end.

The undersigned respectfully recommend the adoption of the following substitute in lieu of the bill:

"[H. R. 23909, Sixty-first Congress, second session.]

"A BILL To authorize the President of the United States to make withdrawals of areas of public lands for classification, and for other purposes, and to require reports to be made to Congress of withdrawals heretofore made and hereafter to be made, and to provide for the classification of lands heretofore withdrawn or that may hereafter be withdrawn.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States may, at any time at his discretion, temporarily withdraw from settlement, location, sale, or entry any of the public lands of the United States and of the district of Alaska, and reserve the same for classification or for other purposes, the purposes of and the reason for the withdrawal to be definitely specified in the order of withdrawal. Such withdrawal and reservation shall remain in force until revoked by the President or by an act of Congress. The Secretary of the Interior shall report to Congress all withdrawals immediately after the same are made, together with copies of all orders of withdrawals, and if Congress be not in session at the time of a withdrawal such report shall be made at the beginning of the next regular session of Congress after the date of the withdrawal.

"Sec. 2. That all withdrawals of areas of public lands heretofore made and now existing shall be immediately reported to Congress by the Secretary of the Interior, together with the reason and authority for such withdrawals.

"Sec. 3. That the Secretary of the Interior is hereby authorized and directed to make, as speedily as practicable, surveys and investigations of all the public lands belonging to the United States now or hereafter withdrawn for any purpose for the purpose of determining which of said lands contain coal, oil, phosphate, gas, or asphaltum, or are suitable for water-power sites, and which of said lands are agricultural, dividing said agricultural lands into irrigable, nonirrigable, dry-farming, farming, timber, and grazing lands, and for the purpose of determining the approximate quantity of the above-named mineral, if any, there is in said lands, what grade thereof it is, and its approximate depth below the surface.

"Sec. 4. That after the said investigation and surveys are made, the Secretary of the Interior shall expeditiously cause the said land to be graded or classified according to the kind, quality, and workability of the minerals contained therein, and the agricultural character thereof, and shall make a complete and full report to Congress showing the grading of the said land and the approximate character, quantity, and workability of the minerals contained in each of the grades submitted. At the beginning of each session of Congress such reports shall be made as to all lands examined and graded up to that time: *Provided*, That the Secretary of the Interior shall, as soon as practicable, make full and final report to Congress of all classifications heretofore made of the public domain, and such classification shall be considered with the classification herein provided for and, so far as found practicable, made a part thereof."

JOS. T. ROBINSON.

SCOTT FERRIS.

W. B. CRAIG.

DUDLEY M. HUGHES.

VIEWS OF EDWARD T. TAYLOR.

The undersigned member of the Committee on the Public Lands is unable to concur in the report of the majority or the other members of the minority on H. R. 24070, entitled "A bill to authorize the President of the United States to make withdrawals of public lands in certain cases," and respectfully recommends as a substitute for the entire bill the following:

Strike out all after the enacting clause and insert the following:

"The President may, at any time, in his discretion, temporarily withdraw from location, settlement, filing, entry, or sale any of the public lands of the United States and of the District of Alaska, and reserve the same for classification or for other purposes, to be definitely specified in the orders of withdrawals, and such withdrawals and reservations shall remain in force until revoked by the President or by an act of Congress. The Secretary of the Interior shall report all such withdrawals to Congress immediately after the same are made, and if Congress be not in session at the time of a withdrawal, such report shall be made at the beginning of the next regular session after the date of the withdrawal: *Provided*, That such lands shall be expeditiously examined and classified, and when so classified shall be thereafter restored to appropriation and disposition under the laws applicable thereto.

"Sec. 2. No withdrawal heretofore or hereafter made shall affect the legal or equitable rights of any settler or entryman initiated prior to such withdrawal, and upon the restoration of any such lands in the United States all such rights shall attach of any bona fide claimant who prior to such withdrawal initiated a claim thereto and made valuable improvements thereon.

"Sec. 3. Nothing in this act, or in any order of withdrawal of the public domain heretofore made, shall be construed to prevent the location and entry of any of the agricultural, nonmineral public land of the United States under the provisions of the homestead or desert-land laws: *Provided*, That all such settlements and entries shall be subject to the right of the Government to examine and classify such lands, and if the same, or any part thereof, be found more valuable for other than agricultural purposes, the entryman's right thereto shall be relinquished, unless such entryman elects to take a surface title thereto, in which case he shall be allowed to enter the surface of said land, subject to the reserved rights of the Government to the coal, oil, gas, and other substances found thereon or therein that renders the same more valuable than for agricultural purposes.

"Sec. 4. Nothing in this act, or in any withdrawal heretofore or hereafter to be made, shall prohibit any person from entering upon any public lands in the United States for the purpose of prospecting, locating, and developing the mineral resources there-

"Sec. 5. Nothing in this act, or in any withdrawal heretofore or hereafter to be made, shall be construed to in any manner affect the absolute title to and rights of the people of the arid States of the West to appropriate and use, subject to their local laws, the waters of all the nonnavigable streams within their borders for domestic, irrigation, manufacturing, power, or any other beneficial purposes: *Provided*, That if in his judgment it may be necessary to prevent a monopoly of water-power sites within any State or Territory, the President may temporarily withdraw such sites from entry and permit such States to acquire title to such lands so withdrawn, pursuant to such regulations as the Secretary of the Interior may establish, or as may hereafter be provided by law."

STATEMENT.

The first two sections of this substitute are substantially the same as the reported bill, with the exception that they recognize but do not expressly ratify or confirm former withdrawals.

Many withdrawals have been hastily and unwisely made and extremely and uselessly excessive and in ruthless violation of the rights of the western States and the counties and the people, and more especially the settlers and the Indians, and I do not believe in attempting to legalize a wrong or attempting to legislate anyone out of any rights he may have. But the withdrawals are made. No one can successfully litigate them, and it is probably useless to question them.

I am not so much concerned about the past as I am about the future policy of this Government in relation to the public domain, and I would not seriously object to the bill as reported if the committee would accept the provisions in sections 3, 4, and 5 of this proposed substitute.

No public-spirited citizen can desire to prevent or even seriously retard the settlement and development of the West. No matter how strong a conservationist a man may be, he can not honestly be desirous of preventing the settlement and cultivation of the actually agricultural public domain and the establishment of homes of citizens thereon; and I can not conceive how anyone can object to section 3, unless he is in favor of repealing the homestead and desert-land laws and absolutely preventing and seriously injuring the development of the West, because that section recognizes and preserves the rights of the Government and merely allows the continuance of agricultural entries.

Section 4 only applies to the precious minerals. There is no law now and never has been any law that could rightfully interfere with the prospecting, locating, and developing of our mineral resources. The development of the minerals of the West has always been one of the most important elements in the upbuilding of this nation, and I can not comprehend how any good citizen can desire at this time to change the policy of this Government in relation to the precious minerals or object to section 4.

Section 5 recognizes what the Supreme Court of the United States has affirmed in some thirty decisions—that the waters of the arid States of the West belong to the people of those States. The constitutions of the States of the West that were adopted and ratified by the enabling act admitting those States into the Union throw open to appropriation all the waters of the nonnavigable streams for beneficial uses upon the doctrine of priority of rights. There is nothing new about that. It is the unquestioned law of this Government. The proviso in section 5 authorizes the President to withdraw power sites and allow them to be disposed of to the State in which they are situated, subject to such regulations as may be adopted by the Secretary of the Interior or enacted into law hereafter by Congress. It seems to me that that is the solution of the water-power question.

It is not the policy of this Government to capitalize the resources of the West for the purpose of making money out of them or out of the various States, or to permanently withdraw all of those resources and prevent them from going into private ownership. It is not for the best interest of the country that the Government should go into the coal business, or the oil, or asphaltum, or water-power business, or any other business that can be conducted by its citizens. It will take from fifteen to twenty years to classify the public lands, and a large portion of them can not be intelligently classified within that time. The only way to determine their value is to allow their entry for the purpose that they are the most valuable for at the present time.

There is nothing in this proposed substitute that is in violation of the principle of conservation; it protects the rights of the Government without permanently or seriously injuring the development of the West; and I respectfully submit that its adoption at this time would protect the rights of all, as well as the bill proposed, without the injury that the bill reported will surely inflict.

EDWARD T. TAYLOR.

[H. R. 24070, Sixty-first Congress, second session. In the Senate of the United States, April 21, 1910. Read twice and referred to the Committee on Public Lands.]

AN ACT To authorize the President of the United States to make withdrawals of public lands in certain cases.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President be, and he hereby is, authorized to withdraw from location, settlement, filing, and entry areas of public lands in the United States, including the District of Alaska, for public uses or for examination and classification to determine their character and value; and the President is further authorized, when in his judgment public interest requires it, to withdraw from location, settlement, filing, and entry areas of public lands in the United States, including the District of Alaska, whether classified or not, and submit to Congress recommendations as to legislation respecting the land so withdrawn.

SEC. 2. That the Secretary of the Interior shall report all withdrawals made under the provisions of this act to Congress at the beginning of its next regular session after date of the withdrawals, specifying the purposes of each thereof. All withdrawals heretofore made and now existing are hereby ratified and confirmed as if originally made under this act. All withdrawals shall remain in force until revoked by the President or by Congress.

Passed the House of Representatives April 20, 1910.

Attest:

A. McDOWELL, *Clerk.*

The CHAIRMAN. Mr. Vertrees, you will please proceed.

TESTIMONY OF C. C. HELTMAN.

C. C. Heltman, being first duly sworn by the chairman, testified as follows:

Mr. VERTREES. I believe this is Mr. C. C. Heltman.

Mr. HELTMAN. Yes, sir.

Mr. VERTREES. Mr. Heltman, where do you live?

Mr. HELTMAN. In Washington, D. C.

Mr. VERTREES. How long have you lived in Washington?

Mr. HELTMAN. Nearly twenty years.

Mr. VERTREES. What is your present profession or vocation?

Mr. HELTMAN. That of lawyer.

Mr. VERTREES. Were you ever connected with the government service; and if so, what department?

Mr. HELTMAN. I was an employee of the Interior Department, in the General Land Office.

Mr. VERTREES. During what period, Mr. Heltman; how long?

Mr. HELTMAN. From 1890 until 1909.

Mr. VERTREES. Did you voluntarily sever your connection with the service?

Mr. HELTMAN. Yes, sir.

Mr. VERTREES. What position did you hold at the time you resigned?

Mr. HELTMAN. At the time I resigned I was the law examiner, a member of the board of law review.

Mr. VERTREES. Previous to that what position had you held?

Mr. HELTMAN. Chief of the Mineral Division of the General Land Office.

Mr. VERTREES. What is the letter name of that division?

Mr. HELTMAN. N.

Mr. VERTREES. You were chief of Division N?

Mr. HELTMAN. Yes, sir.

Mr. VERTREES. During what period were you chief of Division N?

Mr. HELTMAN. I think from about the 1st of September, 1907, until April 22, 1909.

Mr. VERTREES. When did you say you began to be chief?

Mr. HELTMAN. About September 1, 1907. I do not remember the exact date.

Mr. VERTREES. What connection had you with Division N prior to September 1, 1907—any?

Mr. HELTMAN. I was examiner of mineral claims and contests immediately before that time.

Mr. VERTREES. While you were still in Division N?

Mr. HELTMAN. Yes, sir; and prior to that time, since 1891, a clerk in the mineral division.

Mr. VERTREES. Then, I take it, that you are familiar with the procedure in that division, and also with the rules and laws applicable thereto?

Mr. HELTMAN. Yes, sir.

Mr. VERTREES. Was there at any time an order made in May, say about May 16, as to proceeding with the examination of the Alaska claims?

Mr. HELTMAN. Yes, sir; May 16, 1907.

Mr. VERTREES. What was that order?

Mr. HELTMAN. The order was to the effect that all coal claims initiated prior to the withdrawal of November 12, 1906, might proceed, irrespective of the withdrawals.

Mr. VERTREES. Those that were initiated prior to December 12, 1906?

Mr. HELTMAN. November 12.

Mr. VERTREES. November 12, 1906, that was when the President withdrew the Alaska lands from entry by proclamation?

Mr. HELTMAN. Yes, sir.

Mr. VERTREES. Did the office proceed with any Alaskan claim in accordance with that order, and if so, what claims, if you remember, did come in for examination and action?

Mr. HELTMAN. We had in the files 33 coal entries made at Juneau, and under that order we proceeded to adjudicate them.

Senator FLETCHER. May I ask a question there, Mr. Vertrees. By whom was this order made?

Mr. HELTMAN. The order of May 16, 1907, was made by the Secretary, or, rather, by the commissioner, and approved by the Secretary of the Interior.

The CHAIRMAN. Please state what that order was.

Mr. VERTREES. Have you a copy of that order—who was the Secretary then and who was the commissioner?

Mr. HELTMAN. Mr. Garfield was Secretary of the Interior at that time and Mr. Ballinger was Commissioner of the General Land Office.

The CHAIRMAN. I would like to know what that order is.

Mr. VERTREES. I am seeking now to have it introduced. Mr. Heltman, I now bring to your attention an order, or, rather, a communication, to the register and receiver at Juneau, Alaska, signed by R. A. Ballinger, commissioner, and approved May 16, 1907, by James Rudolph Garfield, Secretary, and dated Washington, D. C., May 16, 1907, and ask you if that is the order to which you refer?

Mr. HELTMAN. Yes, sir; that is the order.

Mr. VERTREES. I would like to have you read the whole order, Mr. Heltman.

The CHAIRMAN. Please read the order.

Mr. HELTMAN (reading):

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., May 16, 1907.

REGISTER AND RECEIVER,
Juneau, Alaska.

GENTLEMEN: The following instructions are issued for your guidance:

1. Under the order of November 12, 1906, withdrawing lands in Alaska from entry, location, or filing under the coal-land laws, and subsequent modifications of said order, no lands in Alaska known to contain workable deposits of coal can be entered, located, or filed upon while such orders remain in force, except as hereinafter provided.

2. All qualified persons or associations of qualified persons who had within one year prior to November 12, 1906, in good faith made legal and valid locations under the act of April 28, 1904, may file notices of such locations in the manner and within the time prescribed by said act, if such notices have not already been filed and such locations have not been abandoned or forfeited; and they or any other person or persons to whom they may lawfully assign their rights after such notices have been filed may thereafter proceed to make entry and obtain patent within the time and in the manner prescribed by law.

3. In computing the time within which notices of location may be filed under the preceding paragraph, the time intervening between November 12, 1906, and August 1, 1907, will not be taken into consideration or counted, but such notices may be filed within one year from the date of location exclusive of such time.

4. All qualified persons, or associations of qualified persons, who may have, in good faith, legally filed valid notices of location under the act of April 28, 1904, prior to November 12, 1906, and the bona fide qualified assignees of such persons, may make entry and obtain patent under such notices within the time and in the manner prescribed by statute if they have not abandoned their right to do so.

5. In computing the time within which persons or associations of persons mentioned in the preceding paragraph may apply for patent, the time intervening between November 12, 1906, and the day on which they receive the written notices given by you, as hereinafter required, will not be considered or counted, and such applications may be made at any time within three years from the date on which such notices of location were filed exclusive of such time.

6. You are directed to at once notify all persons or associations of persons who have filed notices of location in your office, including those who have pending applications for patent, and all persons or associations of persons holding, as assignees, under such locations who have notified you of such assignments, of their right to proceed in the manner herein prescribed and authorized, and to furnish them with a copy of these instructions. These notices must be served either personally or by registered mail, and you should carefully preserve with the record in each case the registry return receipt or other evidence of such notice.

7. In all cases where you publish notice of applications for entry or patent under the coal-land laws, or under any other law, you will at once mail a copy of said notice to a special agent assigned to duty in Alaska. Should said agent thereafter file in your office a protest against the validity of the location or claim embraced in any such application, you will defer action upon such application until said protest is withdrawn or appropriate action is taken thereon.

Very respectfully,

R. A. BALLINGER,
Commissioner.

Approved May 16, 1907.

JAMES RUDOLPH GARFIELD,
Secretary.

Mr. VERTREES. Mr. Heltman, I now call your attention to a list of claims, together with memoranda as to when they were received at certain divisions, which appears on page 829 of volume 2 in our record, and ask you to look at that and state what you remember about it, whether it is correct or not, and what it means.

Mr. HELTMAN. This list, I think, was made up in Division B, the patenting division of the General Land Office, and there are some statements in it that I do not remember myself. I presume it is correct. Some of these dates I could verify practically from my recollection.

Mr. VERTREES. The dates given, Mr. Heltman, run from October 25, 1907, to January 23, 1908, and the entries relate to nine of the Cunningham claims. At that time you were Chief of Division N?

Mr. HELTMAN. Yes, sir.

Mr. VERTREES. Now, if I understand correctly, Division P was the division which investigated the facts to see whether or not the claims were fraudulent?

Mr. HELTMAN. Yes, sir.

Mr. VERTREES. And Division N, your division, was the division that examined the claims to see whether or not they were regular, so far as the law was concerned?

Mr. HELTMAN. Yes, sir.

Mr. VERTREES. And then they went from Division N, if they were passed, or when corrected there, as the case might be, to Division B, which was merely the patenting division, where the papers were written up. That is correct, is it?

Mr. HELTMAN. Yes, sir.

Mr. VERTREES. Are the divisions named by other letters of the alphabet in that department?

Mr. HELTMAN. Yes, sir; they commence with A and run to R.

Mr. VERTREES. For our information, could you just state what they are?

Mr. HELTMAN. Division A is the chief clerk's division of the General Land Office; the executive part of the office, you might say. B is the patenting division. Division C is what is called the public lands division. It has charge of homestead entries, timber culture entries, and others perhaps—I do not exactly recall. D is the mails and files division, having charge now of the general records of the office. E has charge of the surveys, exclusive of mineral surveys, the subdivisional surveys. F has charge of railroads, grants, rights of way, and questions growing out of such grants. Division G has charge of—it was originally principally concerned with preemption claims, but now has charge of selections; for example, state selections, under the school grant—

Mr. VERTREES. Desert entries—

Mr. HELTMAN. Desert entries, swamp grants, and Indian allotments, so far as they are concerned with the General Land Office. Division H has charge of agricultural contests. There is no division I. Division K—

Mr. VERTREES. Is there a J?

Mr. HELTMAN. No J.

Mr. VERTREES. No I or J?

Mr. HELTMAN. No I or J. Division K has charge of homesteads in forest reserves under the act of June 11, 1906, and reclamation

matters, entries under the reclamation act. Division L is the drafting division of the office. It prepares the plats, such as are made there; it has the custody of the maps and plats of the office. Division M is the accounts division of the office. It has charge of all the accounts with the various land officials, and also has jurisdiction of repayment claims relating to land matters. Division N, as stated before, is the mineral division of the General Land Office, having charge of mineral and coal entries and all questions where the mineral character of the land is involved; for example, it would adjudicate a contest between an agricultural claimant and a mineral claimant involving the character of land. Division O has charge of the tract books of the office where all filings and entries are posted, and all of these records are examined in connection with the adjudication of cases for conflicts to determine whether any other disposition has been made of the land. Division P has charge of the field service, investigating fraudulent land entries.

The CHAIRMAN. Sometimes called the fraud division?

Mr. HELTMAN. Yes, sir. There is no Q division. Division R has jurisdiction over forest lieu selections—scrip of various kinds. I believe that is all.

Mr. VERTREES. They stop at R. Now, recurring to the memorandum to which I called your attention, it shows that certain entries had passed from Division N to Division B along in October, and then that they were withdrawn by Division N from Division B a little later. Do you know anything about that?

Mr. HELTMAN. No, sir; I do not remember the facts specifically with regard to those withdrawals, but I have an idea of why it was done. There was only one reason, I presume, why it would be done.

Mr. VERTREES. State to the committee your explanation of that—or rather before you do that I will read these facts, which I wish to present to you. The record at page 829 shows that entries Nos. 17, 19, and 21 were received in Division B from Division N October 25, 1907, and that No. 28 was received November 4, 1907, and No. 29 was received by Division B November 4, 1907, and then the entry is that they were withdrawn by Division N on the 5th day of November, 1907 and then returned to Division B on January 6, 1908, and again withdrawn by Division N January 23, 1908. Now, in that connection, before you make your statement, I call your attention to the communication by you dated November 5, 1907, addressed to Mr. Schwartz, as chief of Division P, which appears on page 461 of Senate document, and ask you to read that, and also the notations which appear on that communication of yours, which appear printed just below it.

Mr. HELTMAN. Shall I read it aloud?

Mr. VERTREES. No; just read it for yourself, first.

The CHAIRMAN. Inasmuch as this appears in this document you had better put this letter in the record at this place.

Mr. BRANDEIS. It is already in the record, Mr. Chairman. I think it appears in the testimony at page 76.

Mr. VERTREES. What is the date of that?

Mr. BRANDEIS. The letter of November 5, I suppose you are referring to?

Mr. HELTMAN. November 5, 1907.

Mr. BRANDEIS. It is on page 76 of the record.

Mr. VERTREES. Mr. Heltman, have you read the notation at the bottom?

Mr. HELTMAN. Yes, sir; I have read that.

Mr. VERTREES. Now, state what you know about the matters, or what explanation you can make as to what was done.

Mr. HELTMAN. I think perhaps I had better tell what I found when I took charge of the mineral division. That will lead up to these orders. When I took charge of the mineral division, about September 1—I do not remember the exact date—1907, I found that the examiner who ordinarily examines coal entries had a great amount of work on his desk; he was overloaded, and there did not seem to be much prospect of having that work done very soon, so I directed him to turn a number of those entries over to another examiner who was thoroughly familiar with the coal-land law, and these coal entries—a number of them, at least—those Alaska coal entries, were among the number turned over to this other examiner. This circular of September 1, 1907—do you want me to go into that, Mr. Vertrees?

Mr. VERTREES. Yes; explain that.

Mr. HELTMAN. This circular of September 1, 1907, directed that no coal entries should be approved and patented unless they were clear listed by Division P, the special-service division.

Mr. VERTREES. If the paper now handed you is a copy of that circular, please read it to the end that it may be given in evidence.

Mr. HELTMAN. This is a copy of that circular.

The CHAIRMAN. Read it.

Mr. HELTMAN. It is as follows:

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, September 1, 1907.

CHIEF OF DIVISION N:

Before approving for patent any Alaska coal-land application or entry you will have the same clear listed as to Division P. Unless otherwise directed by Division P, it will be sufficient to furnish that division with the number of the application or entry, with the name of the applicant or entryman, and the attorney in fact, if any.

Respectfully,

FRED DENNETT, *Assistant Commissioner.*

The CHAIRMAN. That is admitted.

Mr. BRANDEIS. That is already in evidence, Mr. Chairman, at page 3115.

Mr. VERTREES. We need not print it, then.

The CHAIRMAN. It is very short, and may be repeated.

Mr. HELTMAN. We understood from that order that we should not approve and send to Division B any coal entries that were not clear-listed by Division P, but in order to prevent the work in the mineral work division from accumulating it was our practice to take cases up in regular order and examine them, and determine whether the proofs were regular or not, and then if there was any objection to their going to patent, to put them into the files again awaiting the time when they might be patented. Those coal entries were examined in that way, and in accordance with this instruction of September 1, 1907, we advised the chief of the Special Service Division P that the entries were examined and were ready for patenting when clear-listed. That is what this letter means.

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that copies thereof may be made in the event your committee desires to retain the original files for any considerable length of time.

Very respectfully,

R. A. BALLINGER,
Secretary.

HON. KNUTE NELSON,
*Chairman Joint Investigating Committee
United States Senate.*

THE SECRETARY OF THE INTERIOR,
Washington, April 22, 1910.

SIR: Referring to your letter of the 16th instant inviting attention to the letter of February 8, 1910, from Chief of Field Division Christensen to Mr. Schwartz as Chief of the Field Service (printed on page 2814 of the testimony), with particular reference to the inclosures transmitted with said letter, I wish to say that a careful and thorough search of the files of the General Land Office fails to disclose said letter or the inclosures therein referred to. Neither Mr. Dennett nor Mr. Schwartz nor any of the employees through whose hands this letter would have passed in the ordinary routine recall ever having seen it. The copy of the letter of May 13, 1908, from the United States attorney to Special Agent Jones, printed on page 2417 of the testimony, was introduced in connection with the testimony of United States Attorney Todd. I inclose herewith copies of the letters referred to in the communication of Christensen to Schwartz of February 8, which were retained by Mr. Christensen at the time his letter of February 8 was written, as follows: (1) Letter of April 22, 1908, from Special Agent Jones to United States Attorney Todd; (2) letter of April 24, 1908, from Chief of Field Division Glavis to Special Agent Jones; (3) letter of May 14, 1908, from Special Agent Jones to United States Attorney Todd; (4) unsigned copy of letter dated June 8, apparently from Chief of Field Division Glavis to the Commissioner of the General Land Office; (5) copy of letter dated May 18, 1908, from United States Attorney Todd to Chief of Field Division Glavis.

All of the calls heretofore made by your committee are being reviewed and any papers located will be submitted at once.

Very respectfully,

R. A. BALLINGER,
Secretary.

HON. KNUTE NELSON,
*Chairman Joint Investigating Committee,
Senate Office Building, Washington, D. C.*

THE SECRETARY OF THE INTERIOR,
Washington, April 22, 1910.

SIR: Replying to your letter of the 20th instant, I beg to say with reference to paragraph one of the letter of Mr. Brandeis that the letter referred to in the telegram of May 8, 1908, to Mr. Glavis, which telegram appears in the Senate document on page 228, was merged in the general instructions to chiefs of field divisions, dated May 12, 1908, and signed by Secretary Garfield, which letter also appears on page 228 of the Senate document.

As to paragraph two, the "report of facts" made by Mr. Glavis and referred to in Commissioner Dennett's letter of June 3, 1908, to Mr. Glavis, which letter appears on page 494 of the Senate document, is not a single report on the general situation, but comprises such matters as Mr. Glavis reported to the chief of field service, Schwartz, in November, 1907, and in subsequent correspondence up to and including the submission to the Commissioner of the General Land Office of the Cunningham journal.

As regards the memorandum prepared by Mr. Murphy, referred to in paragraph three, I transmit herewith said original memorandum, and while unsigned is identified by the writer's initials in the upper left-hand corner of the first page thereof. A copy of this memorandum, furnished the committee by the Forest Service, appears on page 527 of the Senate document.

Very respectfully,

R. A. BALLINGER,
Secretary.

HON. KNUTE NELSON,
*Chairman Joint Investigating Committee,
Senate Office Building, Washington, D. C.*

The CHAIRMAN. The committee will stand adjourned until to-morrow at 10 o'clock.

(Thereupon, at 5.15 p. m., the committee adjourned until Saturday morning, April 23, 1910, at 10 o'clock.)

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NO. 32

HEARINGS BEFORE THE COMMITTEE TO INVESTIGATE THE
INTERIOR DEPARTMENT AND FORESTRY SERVICE

APRIL 23, 1910

ROOM 207, SENATE OFFICE BUILDING
WASHINGTON, D. C.

MEMBERS OF THE JOINT COMMITTEE.

KNUTE NELSON, Minnesota, *Chairman.*

SAMUEL W. McCALL, Massachusetts, *Vice-Chairman.*

FRANK P. FLINT, California.

GEORGE SUTHERLAND, Utah.

ELIHU ROOT, New York.

WILLIAM E. PURCELL, North Dakota.

DUNCAN U. FLETCHER, Florida.

MARLIN E. OLMSTED, Pennsylvania.

EDWIN DENBY, Michigan.

E. H. MADISON, Kansas.

OLLIE M. JAMES, Kentucky.

JAMES M. GRAHAM, Illinois.

PAUL SLEMAN, *Secretary.*

SATURDAY, APRIL 23, 1910.

JOINT COMMITTEE TO INVESTIGATE THE
INTERIOR DEPARTMENT AND FORESTRY SERVICE,
Washington, D. C., April 23, 1910.

The Joint Committee to Investigate the Interior Department and Forestry Service met pursuant to adjournment at 10 a. m.

There were present as counsel: Mr. Louis D. Brandeis, representing Mr. Louis R. Glavis; Mr. George Wharton Pepper and Mr. Nathan A. Smyth, representing Mr. Gifford Pinchot; Mr. John J. Vertrees and Carl Rasch, representing Secretary Ballinger.

The CHAIRMAN. The committee will please come to order. A quorum is present. I desire to announce to counsel and the witnesses that the committee have decided to hold three meetings next week, Thursday, Friday, and Saturday.

The record will show the following withdrawal bills referred to in the testimony of April 22, together with committee reports and substitute bills:

[S. 5485. Sixty-first Congress, second session. In the Senate of the United States. January 18, 1910. Mr. Nelson introduced the following bill; which was read twice and referred to the Committee on Public Lands.]

A BILL To authorize the Secretary of the Interior to make temporary withdrawals of areas of public land pending report and recommendation to Congress, or for examination and classification.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and he hereby is, authorized to temporarily withdraw from location, settlement, filing, and entry areas of public lands pending submission to Congress of recommendation as to legislation respecting the lands so withdrawn when in his opinion such a condition or emergency exists as to require the temporary withdrawal of the lands pending congressional consideration: *Provided*, That the Secretary shall report all withdrawals made under the provisions of this act to Congress at the beginning of its next regular session after date of the withdrawals: *And provided further*, That when, in the opinion of the Secretary of the Interior, the reason for any such withdrawals has ceased to exist and no action has been taken thereon by Congress, he may restore the same to the operation of the public-land laws.

SEC. 2. That the Secretary of the Interior be, and he hereby is, authorized to temporarily withdraw from location, settlement, filing, and entry areas of public lands for examination and classification to determine their character, use, value, and disposition: *Provided*, That such examination and classification shall be promptly initiated after withdrawal, be concluded as soon as possible, and the lands when classified be thereafter immediately restored to appropriation and disposition under the laws applicable thereto.

Mr. HELTMAN. That looks like it; yes, sir. It has the assistant commissioner's signature. I recognize that.

Mr. BRANDEIS. Was there any significance in your having called that—what appears to be a letter—a circular?

Mr. HELTMAN. Oh, no, sir.

Mr. BRANDEIS. A letter was really what it was?

Mr. HELTMAN. Yes, sir; it is a letter, an order—an office order.

Mr. BRANDEIS. Now, it appeared, from facts called to your attention on page 829 by Mr. Vertrees, that six of the eight entries approved, about which you have testified, namely, 17, 19, 21, 23, 28, and 29, had been sent over to Division B on October 25 and November 4, and then on November 5 were withdrawn, just before the letter which you referred to that notified Division P of the fact that they were ready for patenting, so far as Division N was concerned.

Mr. VERTREES. There has been nothing said that shows it was before the communication. It was the same day.

Mr. BRANDEIS. I did not know whether it was before, but it was on the day at some time, either before or after or contemporaneously on that day of November 5.

Mr. HELTMAN. Yes, sir.

Mr. BRANDEIS. Now, do you know how it happened that those six cases had been sent over to Division B and were then withdrawn?

Mr. HELTMAN. Sent over after that order?

Mr. BRANDEIS. Yes. You see the order is dated September 1. They were sent over on October 25 and November 4, and then apparently recalled on November 5, the very day on which you notified Division P.

Mr. HELTMAN. They were sent there apparently because Division P had clear listed them; otherwise they would not have been sent.

Mr. BRANDEIS. Is there anything within your recollection, or any paper of any kind, showing that they had been clear listed by Division P?

Mr. HELTMAN. No, sir; the records ought to show that.

Mr. BRANDEIS. Then I suppose you have no explanation to suggest, unless it be that they were sent by inadvertence.

Mr. HELTMAN. No, sir; they were not sent by inadvertence. They do not do that.

Mr. BRANDEIS. Well, accidents occasionally happen even in Division N.

Mr. HELTMAN. I know that we did not send cases when Division P had any jurisdiction.

Mr. BRANDEIS. I was merely trying to find out, if I could, what the fact was. Here is an order of September 1, which directs you not to send them to Division B until they have been clear listed by Division P.

Mr. HELTMAN. Yes, sir.

Mr. BRANDEIS. We have no evidence here anywhere in this investigation up to the present time that those cases have been clear listed prior to October 25, when these cases—four of the six—were sent over, and I wondered whether there was anything within your knowledge that would explain the circumstances of their having been sent to that division.

Mr. HELTMAN. No; of course, I would say with considerable confidence that they were clear listed. That is all I know about it. I know the practice.

Mr. BRANDEIS. If they were clear listed, you would also say with absolute positiveness that it must have been on some written order?

Mr. HELTMAN. Yes, sir.

Mr. BRANDEIS. And you, I suppose, would therefore suggest, if you desire to get the facts, that some special investigation be made among the papers to see whether there was any such order.

Mr. HELTMAN. There ought to be an order; yes, somewhere.

Mr. BRANDEIS. And there ought to be also some other order leading up to the recall of those six cases from Division B on November 5?

Mr. HELTMAN. That might have been a verbal order.

Mr. BRANDEIS. The latter one might have been verbal?

Mr. HELTMAN. Yes, sir.

Mr. BRANDEIS. But the order clear listing would have been written?

Mr. HELTMAN. I think so; yes, sir.

Mr. BRANDEIS. I would request, Mr. Finney, that you will undertake to make that search.

Mr. FINNEY. I will make it.

Mr. BRANDEIS. Now, Mr. Heltman, it appears also from these papers that subsequently there were additional of those entries, two more of them; one on December 6, I believe, and the other on January 3, that were approved in your division?

Mr. HELTMAN. I believe so; yes, sir.

Mr. BRANDEIS. Those are the ones that Mr. Vertrees referred to in the two letters on pages 77 and 78 of the record?

Mr. HELTMAN. Yes, sir.

Mr. BRANDEIS. Then when you received this letter of Mr. Schwartz, as Chief of Division P, on January 4, 1908, which you also referred to, directing the clear listing of some 25 different claims, what was the status of all the claims in Division N other than those 8 which you had previously notified Division P of as being ready for patent?

Mr. HELTMAN. They were probably suspended because certain evidence or proofs were not filed, such as plats.

Mr. BRANDEIS. That is, technical matters?

Mr. HELTMAN. Yes, sir; technical matters.

Mr. BRANDEIS. We find upon reference to the files of the Mineral Division a letter of January 15, written by the commissioner, which appears on page 3203 of the record, I presume written at your suggestion, calling attention to certain defects in the papers.

Mr. HELTMAN. Yes, sir; that is a Mineral Division letter written by the examiner who had the case up and initialed by him.

Mr. BRANDEIS. Do you know of any other defect except those disclosed in this letter?

Mr. HELTMAN. No, sir.

Mr. BRANDEIS. And such as may have been disclosed in the other letter calling for certain plats?

Mr. HELTMAN. No, sir.

Mr. VERTREES. What page did you say that letter was on?

Mr. BRANDEIS. Page 3203, the letter put in yesterday through Mr. Finney.

Mr. HELTMAN. I only remember the plats because we telegraphed for them. That impressed that on my memory.

Mr. BRANDEIS. How did you happen to telegraph for those plats?

Mr. HELTMAN. I do not think the Mineral Division sent out that telegram. I think it was sent by the Special Service Division, but

my recollection is that the telegram was sent because of the great distance to Alaska and the desirability of getting those plats here as early as possible.

Mr. BRANDEIS. That did not originate in any way with you?

Mr. HELTMAN. Well, I do not know, but I think we may have suggested it, or may have recommended it. We often do that.

Mr. BRANDEIS. Well, as a result of this visit of Mr. Moore's?

Mr. HELTMAN. Likely; yes, sir.

Mr. BRANDEIS. And do you recall anything more about the visits of Mr. Moore?

Mr. HELTMAN. No; I no not.

Mr. BRANDEIS. The visits—I think you said there were a number of them?

Mr. HELTMAN. They were not different from numerous other visits by other people.

Mr. BRANDEIS. Do you recall what he talked about?

Mr. HELTMAN. No; except the general subject-matter of these coal entries. Whether he talked about more than his own, I do not recollect.

Mr. BRANDEIS. And you do not remember anything else that he said on those occasions?

Mr. HELTMAN. No, sir.

Mr. BRANDEIS. Do you recollect his repeating to you any conversations he had with Commissioner Ballinger?

Mr. HELTMAN. No; I do not recollect anything of that at all. I do not know that he saw the commissioner.

Mr. JAMES. Speak a little louder; we can not hear you.

Mr. HELTMAN. I do not know that he saw the commissioner.

Mr. BRANDEIS. You have no recollection of the details of any one of the several conversations that he might have had with you at that time?

Mr. HELTMAN. No, sir.

Mr. BRANDEIS. Now I show you here the original papers on file, and call your attention specifically to the memorandum of the transmission of papers from Division N, as I understand it, to Division B. Here is one. The first one I show you is one that appears to have been received on January 6, 1908.

Mr. HELTMAN. That is a Division B memorandum.

Mr. BRANDEIS. That memorandum and these three memoranda here, one dated January 6, and the other January 13, and the third, January 20, transmitting various cases for patent, are all Division B memoranda, are they?

Mr. HELTMAN. Yes; this is not the list. These are not the lists transmitting from Division N to Division B at all; just their memorandum.

Mr. BRANDEIS. Well, where is the list transmitting from N to B?

Mr. HELTMAN. I do not know.

Mr. BRANDEIS. Well, will you look over these papers, these four sets of original papers, which I think are all the original papers transmitted in this particular connection, and say whether you find among these papers the list which you suggested should accompany them?

(After examining paper, witness hands one to counsel.)

Mr. BRANDEIS. This is the list transmitting from Division N to Division B, containing these three sheets?

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Mr. HELTMAN. Yes, sir; I think you will find—yes; that is the list.

Mr. BRANDEIS. I will introduce that in evidence.

The CHAIRMAN. It is admitted.

(The list is as follows:)

P. J. A.

Division N.

List No. 184.

Approved: Four (4) coal cases sent to recorder October 25, 1907.

Office.	No. of entry.	Attorneys.
Alaska:		
Juneau.....	17	2564.
Juneau.....	19	2565.
Juneau.....	21	2566.
Wyoming:		
Cheyenne.....	118	2563.

H. G. POTTER,
Acting Chief Div. N.

Division N.

List No. 185.

Approved: Two coal cases sent to recorder October 28, 1907.

Office.	No. of entry.	Attorneys.
Alaska:		
Juneau.....	23	2567.
North Dakota:		
Minot.....	58	2568.

C. C. HELTMAN, Chief Division N.

Division N.

List No. 186.

Approved: Three coal cases sent to recorder November 4, 1907.

Office.	No. of entry.	Attorneys.
Alaska:		
Juneau.....	28	2569.
Juneau.....	29	2570.
Colorado:		
Pueblo.....	358	2571. Thayer & Rankin.

C. C. HELTMAN, Chief of Division.

Mr. BRANDEIS. That is all.

Mr. VERTREES. Mr. Heltman, was there not any special order given with respect to these matters, to these claims, or were they pursuing the usual regular and ordinary course?

Mr. HELTMAN. You mean in the mineral division?

Mr. VERTREES. Yes.

Mr. HELTMAN. Yes; they were pursuing the regular course.

Mr. VERTREES. And as I understand you the only special order that you now recall is the one of Mr. Ballinger suspending action.

Mr. HELTMAN. Yes, sir; and that special order of September 1.

Mr. VERTREES. The order of September 1. Yes; those two.

Mr. HELTMAN. Yes, sir.

Mr. VERTREES. What I mean is, there was no officer specially accelerating the movement of these claims, was there?

Mr. HELTMAN. No; I was the only one who was trying to accelerate them in order to get the work out of the division.

Mr. VERTREES. And you were doing that to get the work out and not because anybody had given you any special directions to do so in reference to them?

Mr. HELTMAN. No; we had certain rules there that a case had to remain in the files a certain length of time, and then be taken up in the regular order.

Mr. VERTREES. You were pursuing the same course with the others then that you were pursuing with those?

Mr. HELTMAN. Yes, sir; exactly.

Mr. VERTREES. That is all.

Mr. BRANDEIS. What was the length of time, Mr. Heltman, that the case had to remain on the file before——

Mr. HELTMAN. I think at this time coal entries were held sixty days; that period had varied. At one time they were treated as current as soon as they got into the office and reached our division and the examiner took them up, but I think at this time it was sixty days.

Mr. BRANDEIS. Sixty days before the examiner was authorized to commence his investigation?

Mr. HELTMAN. I think so. I would not be positive about that. Thirty or sixty days.

Mr. BRANDEIS. Now, you say that you recalled those cases from division B. Would there be any paper evidencing that recall?

Mr. HELTMAN. Division B might have my memorandum; they probably did, on a card or something of that kind, that I gathered them up and carried them off. I did not. I just took them and went away with them.

Mr. BRANDEIS. You physically carried them away?

Mr. HELTMAN. I did.

Mr. BRANDEIS. Without giving any order or any writing of any kind?

Mr. HELTMAN. No; I did not give anything. My presence there and the request for them was sufficient.

Mr. BRANDEIS. And they, for their protection, would make any notation that they desired on their records?

Mr. HELTMAN. Yes, sir. I think it was the practice that quite frequently the clerks withdrew cases that they had approved. I think it was the custom for a clerk to give a card to the other division for a case. But in this particular instance I do not think I did, because I was impressed with the fact that I should get hold of them and went and got them and carried them off and let them make the note.

Senator FLETCHER. What has been your occupation since you left the service, Mr. Heltman?

Mr. HELTMAN. I have been practicing law.

Senator FLETCHER. Practicing in the Land Department?

Mr. HELTMAN. Yes, sir.

Senator FLETCHER. What was the condition of the service in the division when you left?

Mr. HELTMAN. In the Mineral Division?

Senator FLETCHER. Yes.

Mr. HELTMAN. The work in the Mineral Division was up to date. We could say to people, if inquiry were made, that if their case had been there the length of time required by the rules it would be taken up for examination.

Senator FLETCHER. Were there any cases of over 60 days of age in your division?

Mr. HELTMAN. Oh, yes; a great many cases there that were suspended. Some suspended; some suspended for years.

Senator FLETCHER. Do you know how many cases were suspended and for what length of time?

Mr. HELTMAN. Oh, no. The most of the cases suspended were on account of protest by the Forestry Service or by the Special Service Division, and of course there was no time fixed. They were suspended until they were clear listed, relieved from that suspension by the other divisions. Other cases were suspended because proofs were defective or the office had taken some adverse action. Of course, under that practice, while the rules provide a regular course of proceeding if parties do not respond in a certain length of time action was taken.

Senator FLETCHER. In those cases was there any sort of rule or regulations that would bring the case to an end within a reasonable time?

Mr. HELTMAN. You mean those suspended by the special-service division?

Senator FLETCHER. Yes, sir.

Mr. HELTMAN. And those suspended by the Forestry Service?

Senator FLETCHER. Yes; for any reason.

Mr. HELTMAN. No; just when they got ready to report they would report. There were cases—in my practice I ran across a case the day before yesterday that had been suspended since 1906 and nothing had been done with it. I have no doubt in the files of the Mineral Division now are cases which have been suspended.

Senator FLETCHER. With them accumulating in that way it would amount to a considerable number of cases in course of time, would it not?

Mr. HELTMAN. Yes, sir.

Senator FLETCHER. Suspended in your division?

Mr. HELTMAN. Yes, sir. Of course, we ask them for reports and try to get reports, and probably they report as soon as they can.

Senator FLETCHER. How were the other divisions as to their work, if you know, when you left the service?

Mr. HELTMAN. I do not know; you mean whether it was current?

Senator FLETCHER. As to whether they were up or whether they were behind with their work.

Mr. HELTMAN. Well, I could not say as to that, but I think the office was pretty well up to date.

Senator FLETCHER. I notice some initials on this list, the document that was furnished yesterday. Approved, for instance, September

11, 1907, "F. P.," and several times that initial appears, F. P. and C. A. H. What are those initials for?

Mr. HELTMAN. C. A. H. are the initials of the examiner or the writer of the letter.

Mr. BRANDEIS. What is the name?

Mr. HELTMAN. Miss Clara A. Hollingsworth.

Senator FLETCHER. J. F. C. appears and F. P. McD.

Mr. HELTMAN. J. F. C. was Mr. Casey—J. F. Casey—and F. P. McD. was Mr. F. P. McDermitt. It depends where the initials are as to what they mean in regard to the letter.

Senator FLETCHER. Those I have referred to appear in the column of disposition and "A. W. P.," then the date, and then the initials, list No. so-and-so. I suppose that means approved?

Mr. HELTMAN. Yes, sir.

Senator FLETCHER. I have no other questions.

Mr. GRAHAM. Mr. Heltman, as I understand it, when matters reached your division there was no further investigation as to facts.

Mr. HELTMAN. Well, if the facts as shown by the proofs were sufficient under the law, why, we did not investigate any further. They had to comply with certain requirements.

Mr. GRAHAM. Well, in any event, your division did not make investigations as to facts, did it? If you found on examination of the papers that there was some fact not stated which should have been stated, you would refer it back, would you, for investigation to the other division?

Mr. HELTMAN. No. There were certain facts that the mineral division had to be satisfied of. The only question that Division P. would investigate was the question of fraud.

Mr. GRAHAM. What kind of facts were investigated in your division?

Mr. HELTMAN. Well, take a coal claim, as to whether the parties had opened the mines.

Mr. GRAHAM. Had you a corps of special agents attached to your division?

Mr. HELTMAN. No; the investigation that we would conduct would be by requiring evidence in the way of affidavits, or if there was a charge by an individual—

Mr. GRAHAM. Who would you call on to get you the affidavits?

Mr. HELTMAN. Why, the parties themselves. We would call through the local land office. We would address a letter to the local land office and say that there were certain defects in the proof, and the claimants would be allowed a certain length of time to supply it.

Mr. GRAHAM. Before receiving the order suspending the Cunningham claims which reached you, had you investigated them with reference to that particular matter?

Mr. HELTMAN. You mean the final order suspending them?

Mr. GRAHAM. Yes; before the order from the Secretary or from Division P?

Mr. HELTMAN. Oh, yes; we had examined the cases as ex parte matters.

Mr. GRAHAM. Had you found any missing facts which, in your judgment, required further investigation?

Mr. HELTMAN. Yes, sir; we found plats missing, I believe, in some of them, if not in all the cases, and I see by this letter that certain papers were not signed.

Mr. GRAHAM. Well, I did not mean to refer to them as facts. Those were really papers and a part of the written record?

Mr. HELTMAN. Yes, sir.

Mr. GRAHAM. It was incomplete?

Mr. HELTMAN. Yes, sir.

Mr. GRAHAM. Well, now, did you in your department investigate beyond that; that is, incomplete files or some record facts which were missing?

Mr. HELTMAN. We conduct no field examination or anything of that kind.

Mr. GRAHAM. Did you have anything whatever to do with the question of fraud?

Mr. HELTMAN. No, nothing; we paid no attention to it unless there was something in the papers which would suggest fraud. In that case we would refer the matter to the special-service division. Even if we found something about the case which looked suspicious we would ask the special-service division to investigate the matter and report to us.

Mr. GRAHAM. Could you give us specific illustrations of what you have in mind as constituting such frauds?

Mr. HELTMAN. Well, I might illustrate by taking some coal cases, for example. For example, we might, and I think we did, on several occasions get a list of coal entries in a mineral division where the same parties who in one way or another seemed to be concerned, or the entrymen were from the same locality and in some cases were related to each other. In a case like that we would suspect combination and ask Division P to make investigation. We would do that.

Mr. GRAHAM. Would not such an investigation as that be peculiarly the province of Division P?

Mr. HELTMAN. Yes, sir.

Mr. GRAHAM. And would you assume that Division P had made that investigation or would you not assume that?

Mr. HELTMAN. No; we would not assume it.

The CHAIRMAN. I understood you to say you would ask Division P to investigate it and report?

Mr. HELTMAN. Yes, sir; if they had known nothing about the case or it had not been called to their attention in the field.

Mr. GRAHAM. Was there any way by which it would be a matter of record in your office as to whether Division P had examined claims concerning frauds?

Mr. HELTMAN. Yes, sir.

Mr. GRAHAM. Would they send any papers along stating whether they had or had not made such an examination or would you, in every case where you suspected fraud, go back to them and inquire of them whether they did make such investigation?

Mr. HELTMAN. No; not always. The practice required that notice of application be served upon the chief of the field division if the claim was in a forest reserve.

The CHAIRMAN. You mean notice of application to make entry?

Mr. HELTMAN. Yes; notice of application to make the entry at the local office to be served upon the chief of the field division and also on the forest officer if within the national forest, and generally when the cases came up there was a notation on that notice that was

given the agent "no protest," signed by the chief of the field division or by the forest officer.

Mr. GRAHAM. In the Cunningham claims that reached you, you found none of those defects; only some missing links in the way of papers?

Mr. HELTMAN. That is all, I understand.

Mr. GRAHAM. And you would in due course have passed them on?

Mr. HELTMAN. Oh, yes.

Mr. GRAHAM. If you had not been otherwise directed?

Mr. HELTMAN. Yes, sir. Of course we knew of this withdrawal in November and the subsequent orders and this order of September 1 and we would probably have been and were cautious about those cases, and would have examined them thoroughly.

Mr. GRAHAM. In giving your answer you are reasoning from your usual course of doing things rather than stating your recollection?

Mr. HELTMAN. Yes, sir.

Mr. BRANDEIS. Mr. Finney, have you with you that file of papers in the Ignatius Mullen entry? I think it would be instructive to have them put in evidence at this point as showing the exact course of proceedings in such cases, and I would like to introduce them in evidence.

The CHAIRMAN. Very well, they are admitted.

(On envelope:) 42299—197—3/80. Juneau, Alaska. Coal entry # 5. Survey # 41. See 38231. Ignatius Mullen. 2593, G. L. O. Entry approved January 15, 1908. C. A. H. July 25—07. To Hon. R. A. Ballinger, H. G. P., 8/15/07. To files awaiting report of special agt. G. L. A., 1/11/08. Referred to Div. N. J. T. M. P. 1907—126316. *Hold Commr's. Tel. Writing.* H. G. P. Jno. P. Gray, atty.

LIST OF PAPERS INCLOSED.

[Coal cash entry No. 5. U. S. coal land survey No. 41. Lobster coal claim. Ignatius Mullen.

1. Coal land declaratory statement No. 180.
 2. Application for patent.
 3. Field notes.
 4. Affidavit of citizenship.
 5. Proof of character and improvements—agent.
 6. Proof of character and improvements—witnesses.
 7. Applicant's affidavit as to use and benefit.
 8. Proof of posting on claim—agent.
 9. Proof of posting on claim—witnesses.
 10. Register's certificate of posting in Land Office.
 11. Proof of publication.
 12. Agreement of publisher.
 13. Receiver's receipt.
 14. Register's certificate of entry.
- (Indorsed:) United States land office, Juneau, Alaska. Coal cash entry No. 5. Coal land survey No. 41. Lobster coal claim. List of papers inclosed.

Field notes of U. S. coal land survey No. 41 (under act of Congress approved April 25, 1904) of the coal land claim of Ignatius Mullen, situated in Kayak mining district, Alaska, executed by Charles S. Hubbell, U. S. Deputy Surveyor.

[Survey commenced April 19, 1905. Survey completed April 26, 1905.]

Address of claimant: Juneau, Alaska.
Names and duties of assistants.—Pat Collins, chairman; Charles Kay, chairman; John W. Hartline, axman; Frank Lawton, flagman; John Hylin, flagman.

PRELIMINARY OATHS OF ASSISTANTS.

We, Pat Collins and Chas. Kay, do solemnly swear that we will well and faithfully execute the duties of chainmen; that we will level the chain upon even and uneven ground, and plumb the tally pins, either by sticking or dropping the same; that we will report the true distances to all notable objects, and the true lengths of all lines that we assist in measuring, to the best of our skill and ability, and in accordance with instructions given us in the survey of a tract of land claimed by Ignatius Mullen, and known as survey No. 41 under the act of Congress, approved April 28, 1904, in the District of Alaska.

PAT COLLINS, *Chainman*.
CHAS. KAY, *Chainman*.

Subscribed and sworn to before me, this seventeenth day of April, 1905.

[SEAL.]

CHARLES S. HUBBELL,
U. S. Dep. Surveyor.

I, John W. Hartline, do solemnly swear that I will well and truly perform the duties of axman in the establishment of corners and other duties, according to instructions given me and to the best of my skill and ability, in the survey of a tract of land claimed by Ignatius Mullen, and known as survey No. 41, under the act of Congress approved April 28, 1904, in the District of Alaska.

JOHN W. HARTLINE, *Axman*.

Subscribed and sworn to before me, this seventeenth day of April, 1905.

[SEAL.]

CHARLES S. HUBBELL,
U. S. Dep. Surveyor.

We, Frank Lawton and John Hylin, do solemnly swear that we will well and truly perform the duties of flagmen, according to instructions given us, to the best of our skill and ability, in the survey of a tract of land claimed by Ignatius Mullen, and known as survey No. 41, under the act of Congress approved April 28, 1904, in the District of Alaska.

FRANK LAWTON, *Flagman*.
JOHN HYLIN, *Flagman*.

Subscribed and sworn to before me, this seventeenth day of April, 1905.

[SEAL.]

CHARLES S. HUBBELL,
U. S. Deputy Surveyor.

SURVEY OF LOBSTER COAL CLAIM FOR IGNATIUS MULLEN.

Field notes—

Of a 159.201 acre tract of coal land in the application of Ignatius Mullen, of Juneau, Alaska, under the act of Congress approved April 28, 1904 (33 Stats., 525), entitled "An act to amend an act entitled 'An act to extend the coal-land laws to the district of Alaska,' approved June 6, 1900" (31 Stats., 330).

Applicant claims title by original location and possession, and will make application for U. S. patent upon the filing of this survey.

Survey commenced Apr. 19, 1905, and completed Apr. 26, 1905. Survey was made with a W. & L. E. Gurley light mountain transit with solar attachment, the horizontal limb having two opposite double verniers reading to single minutes of arc. The instrument was tested and report approved by the surveyor-general for Alaska November 22, 1904, and is now in good order and adjustment. The course was deflected from the true meridian and measurements made with a standard steel tape, compared with a standard steel office tape and found correct. Office tape was compared and approved by the surveyor-general for Alaska November 22, 1904.

This claim lies on the east side of ridge between Trout and Clear creeks, about one-half mile west of Clear Creek and two and one-eighth miles N. E. of the mouth of said creek, and joins the Octopus survey on the east and Frick survey on the south, and the true meridian was obtained from these lines. In addition, the true meridian established on April 16, 1905, in connection with survey of Frick coal claim was connected directly with beginning cor. No. 1 and agreed with the lines of adjoining surveys.

Beginning at N. W. cor. No. 1, U. S. L. M. No. 6 bears N. 55° 38' E. 13.64 chs. Identical with S. W. cor. No. 3 Frick and S. E. cor. No. 4 Victor surveys; N. E. cor. No. 1, Octopus coal claim, unsurveyed, and cor. No. 4 of the location. Falls in gulch; impracticable to set cor. Establish witness corner 1.04 chs. due W.

Identical with witness corners to all above-named claim corners.

A slatestone 30 x 12 x 8 ins., set 12 ins. in ground, with mound of stone 2½ ft. base, 1½ ft. high, bears N. 45° W., 4 lks., chiseled cross (X) at corner point and W. C. cor. 1 Lobster on S. E. face, whence

Sharp point on main ridge bears N. 75° 58' W., approx. 30 chs. dist.

U. S. L. M. No. 6 bears N. 57° 37' E., 14.57 chs. dist.

No bearing trees or rocks available.

Thence S. on west line from true cor. Va. 29° 42' E.

Chains. Descending,

10.00 To trail, course E. and W.

24.68 Foot of steep descent, course E. and W.

38.28 Witness corner to S. W. cor. No. 2.

Identical with witness corners to cor. No. 1 of the location, S. E. cor. Octopus, N. E. cor. Candelaria, and N. W. cor. Deposit coal claims, unsurveyed.

A hemlock post 3 ft. long, 4 ins. square, set 18 ins. in ground, with mound of earth, scribed W. C. cor. 2 Lobster on N. E. face, whence a hemlock 16 ins. dia. bears N. 57° 32' E., 1.90 chs., and a hemlock 8 ins. dia. bears S. 81° 26' W., 76 lks., each blazed and scribed B. T. W. C. cor. 2 Lobster.

39.94 To S. W. cor. No. 2.

Identical with cor. No. 1 of the location, S. E. cor. Octopus, N. E. cor. Candelaria, and N. W. cor. Deposit coal claims, unsurveyed.

Falls in canyon 150 ft. deep; impracticable to set corner.

Thence E. on south line from true cor. Va. 29° 42' E.

Descending,

15.90 Enter spruce and hemlock timber, course N. 45° E. and S. 45° W.

22.24 Creek 2 lks. wide, 1 in. deep, in ravine 30 ft. deep, course S. 45° E.

23.34 Creek 2 lks. wide, 2 ins. deep, in ravine 40 ft. deep, course S. 45° E.

27.44 Creek 2 lks. wide, 1 in. deep, in ravine 40 ft. deep, course S. 45° E.

30.65 Creek 2 lks. wide, 1 in. deep, in ravine 70 ft. deep, course S. 45° E.

33.86 Creek 2 lks. wide, 1 in. deep, in ravine 60 ft. deep, course S. 45° E.

34.34 Creek 8 lks. wide, 4 ins. deep, in ravine 60 ft. deep, course S. 45° E.

37.41 Creek 8 lks. wide, 4 ins. deep, in ravine 100 ft. deep, course S. 45° E.

39.88 To S. E. cor. No. 3.

Identical with cor. No. 2 of the location, S. W. cor. Socorro, N. W. cor. Carlabad, and N. E. cor. Deposit coal claims, unsurveyed.

A hemlock post 3 ft. long, 4 ins. square, set 18 ins. in ground, with mound of stone, scribed cor. 3 Lobster on N. W. face, whence

A hemlock 14 ins. dia. bears S. 65° 55' E., 50 lks., blazed and scribed B. T. cor. 3 Lobster.

Thence N. on east line. Va. 29° 32' E.

Ascending,

3.34 Creek 3 lks. wide, 1 in. deep, banks 3 ft. high, course S. 45° E.

9.71 Leave timber, course E. and W.

22.35 Ravine 30 ft. deep, course N. 70° E. and S. 70° W.

28.22 Gulch 10 ft. deep, course S. 80° E. and N. 80° W.

33.12 Ravine 100 ft. deep, course S. 70° E. and N. 70° W.

39.83 To N. E. cor. No. 4.

Identical with S. E. cor. No. 4 Frick survey, S. W. cor. 2 Syndicate survey, N. W. cor. Socorro coal claim, unsurveyed, and cor. No. 3 of the location. In gulch; impracticable to set corner. Witness corner to N. E. cor. No. 4 brs. N. 79 lks. dist.

Identical with witness corners to S. E. cor. No. 4 Frick survey, cor. No. 3 of the location, S. W. cor. Syndicate, and N. W. cor. Socorro coal claims, unsurveyed.

A hemlock post 3 ft. long, 4 ins. square, set 18 ins. in ground, with mound of stone, scribed W. C. cor. 4 Lobster on the S. W. face, whence

A spruce 24 ins. dia. bears S. 18° 09' W., 3.53 chs., and a hemlock 10 ins. dia. bears S. 88° 56' E., 8.61 chs., each blazed and scribed B. T. W. C. cor. 4 Lobster

Thence W. on north line from true cor. Va. 29° 42' E.

Ascending.

15.00 To trail, N. 45° E. and S. 45° W.

20.27 Foot of steep bluff, course N. and S.

- 22.47 Top of bluff, course N. and S.
31.34 Summit of spur, course N. and S.

Descending.

- 39.94 To cor. No. 1, the place of beginning.
Containing 159.201 acres.

The SE. half of this claim lies along the breaks sloping into Clear Creek and is cut with many deep gulches and ravines and is fairly well timbered. Balance of claim lies in openings and brush thickets. Soil, moss, muck, decomposed shale, and loose rock. Unsuitable for agricultural purposes. The claim is on unsurveyed public land and does not border on the ocean beach or any navigable water. There is no evidence of any mineral except coal.

NOTE.—Was unable to secure assistants at a point convenient to an officer other than myself authorized to administer oaths. Men employed came to the work from different points, and it would have occasioned great delay, expense, and inconvenience to have taken them to such officer. I accordingly administered all preliminary and final oaths, except as shown in proper blanks.

Dated at Seattle, Wash., this sixteenth day of August, 1905.

CHARLES S. HUBBELL,
U. S. Dep. Surveyor.

Tabling and calculations of Lobster coal claim, survey No. 41.

No.	Course.	Distance.	Latitudes.		Departures.		Double M. D.	N. areas.
			North.	South	East.	West.		
1	S.	39.94		39.94			0.	
2	E.	39.88			39.88		79.91	
3	N.	39.83	39.83				79.82	3,184.02
4	W.	39.94				39.94	39.91	
			39.83	39.94	39.88	39.94		23,184.02
			39.89	39.89	39.91	39.91		1,592.01
	Area (acres)							159.201

FINAL OATHS OF ASSISTANTS.

List of names.

A list of the names of the individuals employed by Charles S. Hubbell, United States deputy surveyor, to assist in running, measuring, and marking the lines and corners described in the foregoing field notes of the survey of a tract of land claimed by Ignatius Mullen, and known as "Survey No. 41," under the act of Congress approved April 28, 1904, in the District of Alaska, showing the respective capacities in which they acted.

PAT COLLINS, *Chainman.*
CHAS. KAY, *Chainman.*
JOHN W. HARTLINE, *Asman.*
FRANK LAWTON, *Flagman.*
JOHN HYLIN, *Flagman.*

FINAL OATHS OF ASSISTANTS.

We hereby certify that we assisted Charles S. Hubbell, United States deputy surveyor, in surveying the tract of land claimed by Ignatius Mullen, and known as "Survey No. 41," which is represented in the foregoing field notes as having been surveyed by him and under his direction; and that said survey has been in all respects, to the best of our knowledge and belief, well and faithfully surveyed, and

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the corner monuments established according to the instructions furnished by the United States surveyor-general for Alaska.

PAT COLLINS, *Chairman.*
CHAS. KAY, *Chairman.*
JOHN W. HARTLINE, *Alman.*
FRANK LAWTON, *Flagman.*
JOHN HYLIN, *Flagman.*

Subscribed and sworn to before me by Chas. Kay and John Hylin this 6th day of June, 1905.

CHARLES S. HUBBELL,
United States Deputy Surveyor.

Subscribed and sworn to before me by John W. Hartline and Frank Lawton this 24th day of June, 1905.

[SEAL.]

CHARLES S. HUBBELL,
United States Deputy Surveyor.

Subscribed and sworn to by Pat Collins before me this 1st day of July, 1905.

J. T. HAMILTON,
Notary Public in and for Alaska.

FINAL OATH OF UNITED STATES DEPUTY SURVEYOR.

I, Charles S. Hubbell, United States deputy surveyor, do solemnly swear that in pursuance of the authority vested in me as a duly appointed and legally qualified United States deputy surveyor for the District of Alaska, I have, in strict conformity to the laws of the United States and the official regulations thereunder, faithfully and correctly surveyed the coal-land claim of Ignatius Mullen, known as the "Lobster," situate in Kayak recording district, Alaska, as represented in the foregoing field notes, which accurately show the boundaries of said coal-land claim, as marked by monuments on the ground and described in the attached copy of the location certificate from the records of said district, and that all the corners of said survey have been established and perpetuated in strict accordance with the law, official regulations and instructions thereunder; and I do further solemnly swear that the foregoing are the true and original field notes of said survey.

CHARLES S. HUBBELL,
United States Deputy Surveyor.

Subscribed and sworn to before me this 22d day of August, 1905.

[SEAL.]

WM. L. DISTIN,
United States Surveyor-General for Alaska.

NOTICE OF LOCATION.

Notice is hereby given that the undersigned citizen of the United States over the age of 21 years, has this day, pursuant to the Revised Statutes of the United States and the acts amendatory thereof, and supplemental thereto, and particularly the acts of June 7, 1900, and April 28, 1904, has entered upon and improved and this day made a location of a rectangular tract, one-half mile square, containing 160 acres of coal, being lands in the Kayak mining district, district of Alaska, which said 160 acres of land is more particularly described as follows:

Beginning at corner post No. 1, whence Mineral monument on Monument Hill bears N. 14° 22' 09" east 3,258 feet; thence 160 rods east to corner post No. 2; thence 160 rods north to corner post No. 3; thence 160 rods west to corner post No. 4; thence 160 rods south to corner post No. 1, the place of beginning.

The said coal claim being further described as 2½ miles northeasterly from Kestakas Lake and westerly from Clear Creek.

This claim shall be known as and called the "Lobster coal claim."

Located this 21st day of July, A. D. 1904.

IGNATIUS MULLEN,
By CLARENCE CUNNINGHAM,
Agent and Attorney in Fact.

DISTRICT OF ALASKA, *United States of America*, ss:

I, Clarence Cunningham, do solemnly swear that I am a citizen of the United States of America, and the agent and attorney in fact for Ignatius Mullen. That I am acquainted with the ground described in the foregoing notice of location and therewith called the "Lobster coal claim." That the ground and claim therein described or any part thereof has not, to the best of my knowledge and belief, been located according to the laws of the United States or possessed or held by any other person. That the same is coal-bearing land and of no value for any other minerals, that there is not therein any lode or ledge of gold, silver, cinnabar, or copper whatever. That the four corners thereof are marked with permanent monuments according to law, so that the boundaries thereof may be readily and easily traced.

CLARENCE CUNNINGHAM.

Subscribed and sworn to before me this 5th day of February, A. D. 1905.

P. M. MULLEN, *Receiver*.

DISTRICT OF ALASKA, *Kayak Recording District*, ss:

The within instrument was filed for record by C. Cunningham at 3 o'clock p. m., April 14, 1905, and duly recorded in book 5 of min. loc. on page 305 of the records of said district.

G. C. BRITTON, *District Recorder*.

Fees paid \$3.40.

SURVEYOR-GENERAL'S CERTIFICATE OF APPROVAL OF FIELD NOTES AND SURVEY OF MINING CLAIM.

DEPARTMENT OF THE INTERIOR,
OFFICE OF U. S. SURVEYOR-GENERAL,
Sitka, Alaska, December 16, 1905.

I, U. S. surveyor-general for Alaska, do hereby certify that the foregoing and hereto attached field notes and return of the survey of the mining claim of Ignatius Mullen, known as the "Lobster coal claim," situate in Kayak mining district, District of Alaska, designated as "Survey No. 41," executed by Charles S. Hubbell, U. S. deputy surveyor, April 19-26, 1905, have been critically examined and the necessary corrections and explanations made, and the said field notes and return, and the survey they describe, are hereby approved. A true copy of the copy of the location certificate filed by the applicant for survey is included in the field notes.

WM. L. DISTIN,
U. S. Surveyor-General for Alaska.

U. S. SURVEYOR-GENERAL'S FINAL CERTIFICATE ON FIELD NOTES.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE U. S. SURVEYOR-GENERAL,
Sitka, Alaska, December 16, 1905.

I, U. S. surveyor-general for Alaska, do hereby certify that the foregoing transcript of the field notes, return, and approval of the survey of the mining claim of Ignatius Mullen, known as the "Lobster coal claim," situate in Kayak mining district, District of Alaska, and designated as "Survey No. 41," has been correctly copied from the originals on file in this office; that said field notes furnish such an accurate description of said mining claim as will, if incorporated into a patent, serve fully to identify the premises, and that such reference is made therein to natural objects or permanent monuments as will perpetuate and fix the *locus* thereof.

And I further certify that five hundred dollars' worth of labor has been expended or improvements made upon said mining claim by claimant or grantors, and that said improvements consist of—no improvements reported—and that no portion of said labor or improvements has been included in the estimate of expenditures upon any other claim.

I further certify that the plat thereof, filed in the U. S. land office at Juneau, is correct and in conformity with the foregoing field notes.

WM. L. DISTIN,
United States Surveyor-General for Alaska.

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(Indorsed:) United States land office, Juneau, Alaska. Coal cash entry No. 5. Coal land survey No. 41. Lobster coal claim. Field notes. United States land office, Juneau, Alaska. Received and filed, Feb. 21, 1906. John W. Dudley, register.

POWER OF ATTORNEY.

Know all men by these presents that I, Ignatius Mullen, of Seward, Dist. of Alaska, do hereby make, constitute, and appoint Clarence Cunningham, of Kayak, Alaska, as my attorney in fact for me and in my name to open up, locate, survey, stake, and record coal lands in the Kayak recording district, District of Alaska, and to file all necessary papers therefor, and to make application to the United States land office at Juneau, Alaska, for the entry and purchase of said lands, to have the same surveyed, to make any and all necessary affidavits, and to take any and all steps that may be necessary to procure from the Government of the United States a patent to the said lands and premises, granting the same to me, and to do all other acts appertaining to said survey and entry aforesaid as I myself could do by my own act and in my own proper person.

In witness whereof I have hereunto set my hand and affixed my seal this fifth day of June, A. D. 1905.

IGNATIUS MULLEN. [SEAL.]

DISTRICT OF ALASKA, *Juneau Land District*, ss:

Now, on this fifth day of June, A. D. 1905, before me, John W. Dudley, register in and for the district aforesaid, personally appeared Ignatius Mullen, to me known to be the same person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same voluntarily and of his own free will and accord.

In witness whereof I have hereunto set my hand in my office the day and year in this certificate first above written.

JOHN W. DUDLEY,
Register United States Land Office, Juneau, Alaska.

AFFIDAVIT OF AGENT.

DISTRICT OF ALASKA, *Juneau Recording Dist.*, ss:

I, Clarence Cunningham, do solemnly swear that I am years of age, and a citizen of the United States; that, acting as the duly authorized agent for Ignatius Mullen, whose sworn declaratory statement and power of attorney are hereto attached, I did on the 21st day of July, 1904, locate the following described coal lands for the use and benefit of the said Ignatius Mullen:

Situated in the Kayak recording district, Alaska, about two and three-quarters miles northeasterly from Kostakaw Lake, and westerly from Clear Creek, more particularly described as follows:

Beginning at cor. post No. 1, whence Mineral Monument on Monument Hill bears N. 14° 22' 09" E., 3,256 feet dist.; thence east, 2,640 ft. to cor. post No. 2; thence north, 2,640 ft. to cor. post No. 3; thence west, 2,640 ft. to cor. post No. 4; thence south, 2,640 ft. to cor. No. 1, the place of beginning. Containing 160 acres. Known as the "Lobster coal claim."

And I do furthermore solemnly swear that I am well acquainted with the character of the said above-described lands, and with each and every part thereof, having frequently passed over the same; that my knowledge of said land is such as to enable me to testify understandingly with regard thereto; that there is not, to my knowledge, within the limits thereof any vein or lode of quartz or other rock in place bearing gold, silver, or copper, and that there is not within the limits of the said land, to my knowledge, any valuable deposit of gold, silver, or copper; that this affidavit is made by me as the duly authorized agent of Ignatius Mullen, and that as such agent I have remained continuously in possession of said land since the day of its original location, and have opened a valuable mine of coal thereon. So help me God.

CLARENCE CUNNINGHAM

Subscribed and sworn to before me this 10th day of October, A. D. 1905.

JOHN W. DUDLEY,
Register

COAL LAND DECLARATORY STATEMENT.

DISTRICT OF ALASKA, *Juneau Land District, ss:*

I, Ignatius Mullen, do solemnly swear that I am years of age, and a citizen of the United States; that I never have, either as an individual or as a member of an association, held or purchased any coal lands under the provisions of the Revised Statutes of the United States relating to the sale of coal lands of the United States, nor have I heretofore located any coal claim in Alaska under the act of Congress approved April 28, 1904, and I do hereby declare my intention to purchase, under the provisions aforesaid, the following described tract of land:

Situated in the Kayak recording district, Alaska, about two and three-quarters miles northeasterly from Kostakaw Lake, and westerly from Clear Creek, more particularly described as follows:

Beginning at cor. post No. 1, whence Mineral Monument on Monument Hill bears N 14° 22' 09" E., 3,256 feet dist.; thence east, 2,640 ft. to cor. post. No. 2; thence north, 2,640 ft. to cor. post No. 3; thence west, 2,640 ft. to cor. post No. 4; thence south, 2,640 ft. to cor. No. 1, the place of beginning. Containing 160 acres. Known as the "Lobster coal claim."

That I came into possession of said tract of land on the 21st day of July, 1904, and have ever since remained in actual possession continuously; that I have caused to be opened and located a valuable mine of coal thereon and have caused to be expended in labor and improvements on said mine the sum of dollars; that I am not personally acquainted with the character of said described land, but that I have held possession of the same through my duly authorized agent, C. Cunningham, of Kayak, Alaska, whose affidavit with regard thereto is hereto attached and made a part hereof.

IGNATIUS MULLEN.

Subscribed and sworn to before me this 5th day of June, A. D. 1905.

JOHN W. DUDLEY,

Register U. S. Land Office, Juneau, Alaska.

(Indorsed:) United States Land Office, Juneau, Alaska. Coal Cash Entry No. 5. Coal Land Survey No. 41. Lobster Coal Claim. Coal Land Declaratory Statement No. 180. United States Land Office, Juneau, Alaska. Received and Filed, Oct. 10, 1905. John W. Dudley, Register.

AGREEMENT OF PUBLISHER.

The undersigned, publisher and proprietor of the Valdez News, a weekly newspaper, published at Valdez, District of Alaska, does hereby agree to publish a notice, dated United States land office, Juneau, Alaska, required by chapter six of title thirty-two, Revised Statutes of the United States, of the intention of Ignatius Mullen to apply for a patent on coal claim Lobster, situate in Kayak recording district, known as "U. S. coal-land survey No. 41," and to hold the said Ignatius Mullen alone responsible for the amount due for publishing the same. And it is hereby expressly stipulated and agreed that no claim shall be made against the Government of the United States, or its officers or agents, for such publication.

Witness my hand and seal this 15th day of December, A. D. 1905.

A. W. RICHFORD.

Witnesses:

L. A. DEFUY.

D. P. GRISWOLD.

(Indorsed:) United States land office, Juneau, Alaska. Coal cash entry No. 5. Coal-land survey No. 41. Lobster coal claim. Agreement of publisher. United States land office, Juneau, Alaska. Received and filed Feb. 21, 1906. John W. Dudley, register.

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[This letter must invariably be used by the surveyor-general in advising the General Land Office and the appropriate local land office of the approval of a mineral survey.—Paragraph 37, Mining Regulations, approved December 18, 1903, as amended by Secretary of the Interior December 23, 1904; also paragraph 147 as amended August 4, 1904.]

DEPARTMENT OF THE INTERIOR,
OFFICE OF U. S. SURVEYOR-GENERAL FOR DISTRICT OF ALASKA,
Sitka, Alaska, Dec. 19, 1905.

The COMMISSIONER OF THE GENERAL LAND OFFICE.

SIR: I have to advise you that on December 16, 1905, I approved the following-described mineral survey:

Number of survey, 41 (coal); name and area of claim, Lobster coal land claim, 159,201 acres.

Name and survey number of each approved mineral survey with which actually in conflict, as such conflicting claims are actually marked, defined, and established on the ground—no conflict reported.

Applicant for survey (name and address), Ignatius Mullen, Juneau, Alaska.

Survey made by Charles S. Hubbell, U. S. deputy mineral surveyor.

On unsurveyed land in Kayak recording district, Alaska.

WM. L. DISTIN, *Surveyor-General*.

(Indorsed:) U. S. General Land Office, received Jan. 2, 1906. 107. Department of the Interior, office of U. S. surveyor-general, Sitka, Alaska, Dec. 19, 1905. Surveyor-general reports approval of mineral survey No. 41 (coal), for the Lobster coal land claim. Carrier 5.

APPLICATION FOR PATENT.

I, Ignatius Mullen, claiming under the provisions of the Revised Statutes of the United States relating to the sale of coal lands of the United States, and under the act of Congress approved April 28, 1904, the right of purchase to that certain coal claim, situate in the Kayak recording district, District of Alaska, and known and designated by the U. S. surveyor-general for Alaska as U. S. coal land survey No. 41, subject to sale at the U. S. land office at Juneau, Alaska, do solemnly swear that I have never had the right of purchase under the aforesaid provisions of law either as an individual or as a member of an association, and that I have never held any other lands under its provisions; I further swear that I have expended in developing a coal mine on said tract, in labor and improvements, the sum of sixteen hundred dollars, the nature of such improvements being shown by the affidavit of my duly authorized agent with regard thereto filed herewith and duly corroborated; that I am now in the actual possession of said mine, through my duly authorized agent, Clarence Cunningham, of Kayak, Alaska, whom I have heretofore appointed as such for the purpose of making the location, record, and entry of said coal lands for me and in my name, and through him I make the entry for my own use and benefit, and not directly or indirectly for the use and benefit of any other party; that I am not acquainted with the character of the land in said U. S. coal land survey No. 41, never having been thereon. that I am informed and believe that the same is chiefly valuable for coal; that there is not, to my knowledge, within the limits thereof, any vein or lode of quartz or other rock in place bearing gold, silver, or copper, and that there is not within the limits of said land, to my knowledge, any valuable deposit of gold, silver or copper. So help me God.

IGNATIUS MULLEN

DISTRICT OF ALASKA, *Kenai Precinct*, ss:

Subscribed and sworn to before me this twelfth day of February, A. D. 1906.

[SEAL.]

H. H. HILDRETH,
United States Commissioner

(Indorsed:) C. L. Appln. No. 4, Ignatius Mullen, C. L. Sur. No. 41. United States land office, Juneau, Alaska. Coal cash entry No. 5. Coal land survey No. 41 Lobster coal claim. Application for patent. United States land office, Juneau, Alaska. Received and filed Feb. 21, 1906. John W. Dudley, Register.

AFFIDAVIT OF CITIZENSHIP—NATIVE.

Ignatius Mullen, being first duly sworn according to law, deposes and says that he is the identical Ignatius Mullen who is the applicant for patent for the lands in U. S. coal land survey No. 41, in the District of Alaska; that he is a native born citizen of the United States, born in Omaha, county of Douglas, State of Nebraska, in the year 1881, and is now a resident of Seward, District of Alaska.

IGNATIUS MULLEN

DISTRICT OF ALASKA, *Kenai Precinct, ss:*

Subscribed and sworn to before me this twelfth day of February, A. D. 1906.

[SEAL.]

H. H. HILDRETH,
United States Commissioner.

Indorsed: United States Land office, Juneau, Alaska. Coal cash entry No. 5, coal land survey No. 41, Lobster coal claim. Affidavit of citizenship. United States land office, Juneau, Alaska. Received and filed, Feb. 21, 1906. John W. Dudley, register.

N.

4—653.

RECEIVER'S RECEIPT.

COAL-LAND APPLICATION.

[Original to be immediately forwarded to General Land Office. Duplicate to be given applicant.]

Coal-land application No. 4.

Coal-land survey No. 41.

UNITED STATES LAND OFFICE,
Juneau, Alaska, Feb. 21, 1906.

Received from Ignatius Mullen, by Clarence Cunningham, atty. in fact, the sum of ten dollars, being the fee of five dollars payable to the register and five dollars payable to the receiver under paragraph 9 of section 2238, United States Revised Statutes, for filing and acting upon coal-land application No. 4, for a patent to the Lobster coal claim, in the Kayak recording district, designated as coal-land survey No. 41.

P. M. MULLEN, *Receiver.*

I hereby certify that the coal-land claim to which a patent is applied for as afore said, containing 159.201 acres, is free from conflict with any existing application or entry and is vacant land subject to such appropriation, as appears from examination of the records of this office.

JOHN W. DUDLEY, *Register.*

FEB. 21, 1906.

Indorsed: Juneau, Alaska, land office. Receiver's receipt in coal-land application No. 4, coal-land survey No. 41, Lobster coal-land claim. U. S. General Land Office. Received Mar. 12, 1906. 42641.

AFFIDAVIT AS TO CHARACTER OF COAL LANDS AND IMPROVEMENTS.

UNITED STATES OF AMERICA, *District of Alaska, ss:*

Henry L. Hawkins of Seattle, Washington, being first duly sworn according to law, on his oath deposes and says:

That he is a civil and mining engineer and has engaged in the practice of his profession for more than a period of 22 years. That he is familiar with coal lands and coal deposits together with the working and development of the same both on the surface and underground. That his experience in coal mining has extended over a period of 15 years in the capacity of general superintendent and engineer in the Franklin, New Castle, Melmont and Ravendale mines situate in the State of Washington.

That he is acquainted and familiar with certain tracts of coal lands situate in the Kayak mining district, in the District of Alaska, having made an examination as an expert of the said coal lands and coal deposits for the purpose of ascertaining their extent and character, during the year 1905.

That the coal lands with which he is particularly acquainted, by reason of his examination in said district, are about fifty in number located by Clarence Cunningham and others, under power of attorney, for various persons residing in the State of Washington and elsewhere. That these claims above mentioned are located in tracts of one hundred and sixty acres and are contiguous. That the object of this examination was to ascertain the character and extent of the coal measures and deposits.

That he is acquainted with and knows that certain coal claim or tract of land called the Lobster, situate in said district and known and designated by the United States surveyor for Alaska as United States Coal Land Survey Number 41. That he has frequently passed over and carefully examined the same. That his knowledge of said land is such as to enable him to testify understandingly with regard thereto.

That the same is chiefly valuable for coal and that there is not, to his knowledge, within the limits thereof, any vein or lode of quartz, or other rock in place bearing gold, silver, copper, cinnabar, lead, or other precious or valuable metals, and that there is not within the limits of said claim, to his knowledge, any valuable deposit of gold, silver, copper, cinnabar, lead, or other precious or valuable metal or mineral, save only the coal therein, and that there is not, upon the said land, any salt springs or salt deposits of any kind. That a valuable deposit of coal is disclosed therein. That the said coal is of merchantable quality and is disclosed by surface cuts and shafts. That the said openings are sufficient to enable affiant to trace the coal measures throughout the entire claim.

That in addition to the work done upon that particular claim, there are several thousand feet of tunnels and drifts driven in various places on the several claims herein mentioned to prove the existence and character of the coal measures; also roads and trails enabling one to traverse the various claims. That the said tunnels and drifts show that the said deposits are large in extent and continuous, and extend throughout the several claims above referred to.

That the said land is not valuable for agricultural purposes, and that the post-office address of affiant is Seattle, Washington. That the said affiant is not interested, directly or indirectly, in said land nor in this application for patent.

H. L. HAWKINS.

I hereby certify that the foregoing affidavit was read to the affiant before he signed his name thereto. That affiant is to me personally known, and that I verily believe him to be a credible person and the person he represents himself to be, and that the foregoing affidavit was subscribed and sworn to before me at my office in Valdez, Alaska, within ——— land district on this 12th day of June, A. D. 1906.

B. B. LOCKHART, *Notary Public*.

Indorsed: United States Land Office, Juneau, Alaska. Coal Cash Entry No. 5 Coal Land Survey No. 41. Lobster Coal Claim. Proof of Character and Improvements—Witnesses. United States Land Office, Juneau, Alaska. Received and filed, Mar. 13, 1907. John W. Dudley, Register.

AFFIDAVIT AS TO CHARACTER OF COAL LAND AND IMPROVEMENTS—WITNESS.

S. C. Chesum, of Katalla, Alaska, being first duly sworn according to law, upon his oath deposes and says that he is a citizen of the United States, over the age of 21, and is by profession and practice a miner; that since August, 1903, he has resided in the district of Kayak, Alaska, and is familiar with that certain coal claim situate in the said Kayak mining district of Alaska known and designated by the U. S. Surveyor-General for Alaska as U. S. Coal Land Survey No. 41, for which application for patent is being made by Ignatius Mullen.

Affiant further states that he had charge of and directed the work of development and improvements contained thereon during the years 1903, 4, and 5; also accompanied the engineer who made the survey required by law before making the above-mentioned application for patent; that he is familiar with and has frequently passed over the aforesaid claim, which is chiefly valuable for coal; that there is not to his knowledge within the limits thereof any vein or lode of quartz or other rock in place bearing gold, silver, copper, cinnabar, or lead; and that there is not to his knowledge any valuable deposit of mineral other than coal; that the nature of improvements done upon and in the interest of said claim is as follows:

Cuts and openings made to establish the width, continuity, and quality of sixteen well-defined veins which traverse the entire claim; that he has no interest directly or indirectly in the said land, nor in this application for patent.

S. C. CHESUM.

STATE OF WASHINGTON, *County of Pierce, ss:*

Subscribed and sworn to before me this 29th day of June, A. D. 1906, and I hereby certify that I consider the above deponent to be a credible and reliable person to whose affidavit full faith and credit should be given.

CHAS. W. STEWART,
Notary Public, residing at Tacoma, Wash.

PROOF OF PUBLICATION.

UNITED STATES OF AMERICA }
District of Alaska. ss:

A. W. ROCHFORD, being first duly sworn, deposes and says that he is the editor and proprietor of The Valdez News, a weekly newspaper published at Valdez, District of Alaska, that the notice of the application for a patent for the Lobster coal claim described in U. S. Coal Land Survey No. 41, of which a copy is hereto attached, was first published in said newspaper in its issue dated the 21st day of April, A. D. 1906, and was published in each weekly issue of said newspaper, and not in the supplement, for ten consecutive weeks thereafter, the full period of sixty days, the last publication thereof being in the issue of the 23 day of June, A. D. 1906.

A. W. ROCHFORD.

Subscribed and sworn to before me this 12th day of July, A. D., 1906.

[SEAL.]

JNO. Y. OSTRANDER,
Notary Public.

NOTICE OF APPLICATION FOR PATENT FOR COAL LANDS.

U. S. LAND OFFICE,
Juneau, Alaska, Feb. 21, 1906.

Notice is hereby given that Ignatius Mullen, of Seward, Alaska, through his duly authorized agent, Clarence Cunningham, of Kayak, Alaska, has made application under the provisions of the United States Revised Statutes, relating to the sale of coal lands of the United States, and under the act of Congress approved April 28, 1904, to purchase that tract of coal land known as the Lobster coal claim, situate in the Kayak recording district, District of Alaska, designated by the U. S. surveyor-general of Alaska as U. S. Coal Land Survey No. 41, in the district of lands subject to sale at the land office at Juneau, Alaska, and more particularly described as follows:

Beginning at cor. No. 1, identical with cor. 3 Frick, cor. 4 Victor, and cor. 1 Octopus coal claims, whence U. S. L. M. No. 6 bears N. 58 deg. 38 min. E., 13.64 chs. distant and witness cor. bears west, 1.04 chs.; thence, from true cor. true south, variation 29 deg. 42 min. E., 38.28 chs. witness cor., a post marked W. C. cor. 2 Lobster, 39.94 chs. to cor. No. 2; thence true east, variation 29 deg. 42 min. E., 39.88 chs. to cor. No. 3, identical with S. W. cor. Socorro, N. W. cor. Carlsbad, and N. E. cor. Deposit coal claims, a post marked cor. 3 Lobster; thence true north, 39.83 chs. to cor. 4, identical with cor. No. 4 Frick, cor. No. 2 Syndicate, and N. W. cor. Socorro coal claims, witness cor. bears north 79 lks. distant, a post marked W. C. cor. 4 Lobster; thence true west, variation 29 deg. 42 min. E., 39.94 chs. to cor. No. 1, the place of beginning. Area 159.201 acres. Magnetic variation at cor. No. 3, 29 deg. 32 min. east.

Any and all persons claiming adversely any portion of the above described coal claim are required to file with the register and receiver of the U. S. land office at Juneau, Alaska, their adverse claim there against, under oath, during the sixty days' period of the publication of the notice of said application or within six months thereafter, or they will be barred by provisions of the statute.

IGNATIUS MULLEN.

It is hereby ordered that the foregoing notice be published for the statutory period in The Valdez News, a weekly newspaper printed at Valdez, Alaska.

JOHN W. DUDLEY, *Register.*

Indorsed: United States land office, Juneau, Alaska. Coal cash entry No. 5, coal land survey No. 41, Lobster coal claim. Proof of publication. United States land office, Juneau, Alaska. Received and filed Mar. 13, 1907. John W. Dudley, Register.

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AGENT'S AFFIDAVIT OF POSTING OF NOTICE AND PLAT ON CLAIM.

Clarence Cunningham, being first duly sworn according to law, deposes and says that he is the agent for Ignatius Mullen who is the applicant for patent for the Lobster coal claim, U. S. coal land survey No. 41, situate in the Kayak recording district, Alaska; that he is duly authorized and empowered by power of attorney on file in this application, to make any and all necessary affidavits and proofs in the said application of said Ignatius Mullen.

That a notice of said application for a United States patent for said coal claim, together with a plat of the official survey of said claim, duly certified by the U. S. surveyor-general of Alaska, remained posted in a conspicuous place upon said Lobster coal claim, to wit: On a tree 250 feet from the northeast corner on the east line from the 17th day of March, A. D. 1906, to and including the 30th day of June, A. D. 1906.

CLARENCE CUNNINGHAM.

UNITED STATES OF AMERICA, } ss:
District of Alaska.

Subscribed and sworn to before me this 12th day of July, A. D. 1906.

[SEAL.]

A. C. WILLIAMS,
Notary Public.

Indorsed: United States land office, Juneau, Alaska. Coal cash entry No. 5, coal land survey No. 41, Lobster coal claim. Proof of posting on claim, agent. United States land office, Juneau, Alaska. Received and filed Mar. 13, 1907. John W. Dudley, register.

AFFIDAVIT OF POSTING—WITNESSES.

James McGrath, being first duly sworn according to law, deposes and says that he is, and at all times hereinafter mentioned was, a citizen of the United States, over the age of twenty-one years, and resides in Catella, Alaska; that he was present on the Lobster coal claim, known and designated by the U. S. surveyor-general of Alaska as U. S. coal land survey No. 41, in the Kayak recording district, District of Alaska, during the months of March, April, May, and June, 1906; that of his own knowledge he knows that the plat of the said survey No. 41, duly authenticated, and a copy of the notice of the application of Ignatius Mullen to enter the same were posted on said claim or survey in a conspicuous place, to-wit. on a tree 250 feet from the northeast corner on the east line on the 17th day of March, 1906, and that they remained so posted continuously thereon until and including the 30th day of June, 1906.

JAMES McGRATH.

UNITED STATES OF AMERICA, } ss:
District of Alaska.

Subscribed and sworn to before me this 12th day of July, A. D. 1906.

[SEAL.]

A. C. WILLIAMS,
Notary Public.

Indorsed: United States Land Office, Juneau, Alaska. Coal cash entry No. 5, coal land survey No. 41, Lobster coal claim. Proof of posting on claim—Witnesses United States Land Office, Juneau, Alaska, received and filed, Mar. 13, 1907. John W. Dudley, Register.

AFFIDAVIT OF POSTING WITNESS.

S. C. Chezum, being first duly sworn according to law, deposes and says that he is a citizen of the United States, over the age of twenty-one years, and resides in Catella, Alaska; that he was present on the Lobster coal claim, known and designated by the U. S. surveyor-general of Alaska as U. S. coal-land survey No. 41, in the Kayak recording district, District of Alaska, at various times during the months of March, April, May, and June, 1906.

That a notice of the application of Ignatius Mullen for a United States patent for said coal claim, together with a plat of the official survey of said claim, duly certified

by the U. S. surveyor-general of Alaska, remained posted in a conspicuous place upon said coal claim, to wit, on a tree 250 feet from the northeast corner on the east line, from the 17th day of March, A. D. 1906, to and including the 30th day of June, A. D. 1906.

S. C. CHEZUM.

UNITED STATES OF AMERICA, } ss:
District of Alaska,

Subscribed and sworn to before me this second day of November, A. D. 1906.

JOHN W. DUDLEY,
Register Juneau, Alaska, Land Office.

AFFIDAVIT OF APPLICANT.

DISTRICT OF ALASKA, } ss:
United States of America,

Ignatius Mullen, of Seward, Alaska, being first duly sworn according to law, deposes and says, that he is the identical person of that name who made, by power of attorney, to one Clarence Cunningham, a coal location of 159.201 acres of public land in the Kayak recording district, Alaska, under the act of Congress approved April 28, 1904, said coal claim being known of record as the Lobster coal claim; that he is the same person who applies to enter said claim under U. S. coal land survey No. 41.

That said location was made for the sole use and benefit of the affiant, and has ever since so remained his, and in his exclusive control; that at no time prior to location or at such time since has affiant entered into any agreement, expressed or implied, or pledged himself by promise or otherwise, expressed or implied, by which the title to said land, or any part thereof, or interest therein, is to pass to any other person or association whatsoever; that in event said claim goes to entry in the U. S. land office at Juneau, Alaska, and the receiver's receipt for the purchase price issues, he will not be under any contract or obligation or promise to sell or convey said tract to any person or persons or association, or to put same into any company or joint holding for any purpose, or to otherwise dispose of same, but will be free in every way to hold said tract, to lease or sell it at any future time.

That he does not now know any person or persons or association that intend or contemplate the leasing or the purchase of said tract.

That a valuable vein of merchantable coal has been developed by the affiant, through his said agent, upon said tract, as he verily believes; that the affiant has expended in making said location, in charges for services of said agent, in developing said vein of coal and in expenses incident to the acquirement of title the sum of about \$2,000; that said sum was his own personal funds, or borrowed for such purpose, but without any agreement or understanding that the person loaning such, or any one other than the affiant, should have any interest in or control over said tract.

That this affidavit is made for the purpose of additional evidence of the affiant's bona fides in the matter of said coal location and proposed entry, and for use as part of the record in said application.

IGNATIUS MULLEN.

Subscribed and sworn to before me this tenth day of December, A. D. 1906.

H. R. LOVE,
Special Agent, G. L. O.

Indorsed: United States Land Office, Juneau, Alaska. Coal cash entry No. 5, coal land survey No. 41, Lobster coal claim. Applicant's affidavit as to use and benefit. United States land office, Juneau, Alaska. Received and filed Jan. 7, 1907

JOHN W. DUDLEY, Register.

AFFIDAVIT OF AGENT AS TO CHARACTER OF IMPROVEMENTS.

Clarence Cunningham, being first duly sworn according to law, deposes and says that he is the agent and attorney in fact for Ignatius Mullen, who is applying for a United States patent for the Lobster coal claim, situate in the Kayak recording district, District of Alaska, and known and designated by the U. S. surveyor-general for Alaska as U. S. coal-land survey No. 41; that he is well acquainted with the character of the land in said coal claim and with the nature and extent of the improvements

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placed thereon by the said applicant or at his expense; that the nature of said improvements is as follows: A fine graded trail leading from Trout Creek through this claim, several cuts and openings made to explore surface values, and a joint ownership in 2,000 feet of tunnels driven on the coal measures from Trout Creek to explore the character of the coal and coal measures at a depth of 1,500 feet below the above-named surface openings, the sum of \$2,000 having been spent thereon.

CLARENCE CUNNINGHAM.

DISTRICT OF ALASKA, *Juneau Land District, ss:*

Subscribed and sworn to before me this second day of January, A. D. 1907.

JOHN W. DUDLEY,

Register Juneau (Alaska) Land Office.

Indorsed: United States Land Office, Juneau, Alaska. Coal cash entry No. 5. coal-land survey No. 41, Lobster coal claim. Proof of character and improvements—agent United States land office, Juneau, Alaska. Received and filed Mar. 13, 1907. John W. Dudley, register.

4-219 a.

REGISTER'S FINAL COAL CERTIFICATE OF ENTRY.

Coal entry No. 5.

LAND OFFICE AT JUNEAU, ALASKA.

March 13, 1907

It is hereby certified that in pursuance of the Revised Statutes of the United States relating to coal lands, Ignatius Mullen, residing at Seward, in Alaska, on this day purchased of the register of this office the lands in U. S. coal land survey No. 41, known as the Lobster coal claim, situated in the Kayak recording district, Alaska, containing 159.201 acres, at the rate of ten dollars per acre, amounting to one thousand five hundred and ninety two dollars and one cent, for which the said Ignatius Mullen has made payment in full as required by law.

Now, therefore, be it known that, on presentation of this certificate to the Commissioner of the General Land Office, the said Ignatius Mullen shall be entitled to receive a patent for the land above described if all be found regular.

JOHN W. DUDLEY, *Register.*

Indorsed: Coal land. Coal entry No. 5. Cash entry. Land office at Juneau, Alaska. Coal land survey No. 41.

4-145 a.

RECEIVER'S COAL RECEIPT.

Coal entry No. 5.

RECEIVER'S OFFICE AT JUNEAU, ALASKA,

March 13, 1907.

Received from Ignatius Mullen, of Seward, Alaska, the sum of one thousand five hundred and ninety-two dollars and one cent, being in full for the lands in U. S. coal-land survey No. 41, known as the Lobster coal claim, situated in the Kayak recording district, Alaska, containing one hundred and fifty-nine $\frac{3}{100}$ acres and — hundredths, at \$10.00 per acre.

P. M. MULLEN, *Receiver.*

\$1,592.01.

Indorsed: Receiver's coal receipt. Coal entry No. 5. In case of Ignatius Mullen. Lobster coal claim, coal-land survey No. 41. Land office at Juneau, Alaska.

4-227.

CERTIFICATE AS TO POSTING OF NOTICE.

DEPARTMENT OF THE INTERIOR,

UNITED STATES LAND OFFICE,

At Juneau, Alaska, Mar. 13, 1907.

I, John W. Dudley, register, do hereby certify that a notice, a printed copy of which is hereto attached, was by me posted in a conspicuous place in my office for a period of more than sixty days, I having first posted said notice on the 21st day of February, 1906, and it remained so posted until Mar. 13, 1907.

JOHN W. DUDLEY, *Register.*

NOTICE OF APPLICATION FOR PATENT FOR COAL LANDS.

U. S. LAND OFFICE,
Juneau, Alaska, Feb. 21, 1906.

Notice is hereby given that Ignatius Mullen, of Seward, Alaska, through his duly authorized agent, Clarence Cunningham, of Kayak, Alaska, has made application, under the provisions of the United States Revised Statutes relating to the sale of coal lands of the United States, and under the act of Congress approved April 28, 1904, to purchase that tract of coal land known as the Lobster coal claim, situate in the Kayak recording district, District of Alaska, designated by the U. S. surveyor-general of Alaska as U. S. coal-land survey No. 41, in the district of lands subject to sale at the land office at Juneau, Alaska, and more particularly described as follows:

Beginning at cor. No. 1, identical with cor. 3 Frick, cor. 4 Victor, and cor. 1 Octopus coal claims, whence U. S. L. M. No. 6 bears N. 55 deg. 38 min. E., 13.64 chs. distant, and witness cor. bears west, 1.04 chs.; thence from true cor. true south, variation 29 deg. 42 min. E., 38.28 chs. witness cor., a post marked W. C. cor. 2 Lobster, 39.94 chs. to cor. No. 2; thence true east, variation 29 deg. 42 min. E., 39.88 chs. to cor. No. 3, identical with SW. cor. Socorro, NW. cor. Carlsbad, and NE. cor. Deposit coal claims, a post marked cor. 3 Lobster; thence true north, 39.83 chs., to cor. 4, identical with cor. No. 4 Frick, cor. No. 2 Syndicate, and NW. cor. Socorro coal claims, witness cor. bears north, 79 lks. distant, a post marked W. C. cor. 4 Lobster; thence true west, variation 29 deg. 42 min. E., 39.94 chs. to cor. No. 1, the place of beginning. Area, 159.201 acres. Magnetic variation at cor. No. 3, 29 deg. 32 min. east.

Any and all persons claiming adversely any portion of the above described coal claim are required to file with the register and receiver of the U. S. land office at Juneau, Alaska, their adverse claim there against, under oath, during the sixty days' period of the publication of the notice of said application or within six months thereafter or they will be barred by provisions of the statute.

IGNATIUS MULLEN.

It is hereby ordered that the foregoing notice be published for the statutory period in *The Valdez News*, a weekly newspaper printed at Valdez, Alaska.

JOHN W. DUDLEY, *Register*.

(Indorsed:) United States land office, Juneau, Alaska. Coal cash entry No. 5, coal land survey No. 41, Lobster coal claim. Register's certificate of posting in land office. United States land office, Alaska. Received and filed, ———, ———, Register.

STATE OF WASHINGTON, *County of King, ss:*

Ignatius Mullen, being first duly sworn, on his oath says that he is the identical Ignatius Mullen who made coal entry No. — at the U. S. land office, Juneau, Alaska; that all the money expended in said matter, in the location, exploration, and prospecting, and in proof and payment and otherwise, was his own funds; that no part was borrowed from anyone or advanced by his father or any other person; that said entry was for his own exclusive benefit and never for the use or benefit of any other person, his parents or otherwise, and has so remained; that he is at present the sole owner of said tract, and that no one has any interest therein save himself.

That this affidavit is made to further supplement the proof of affiant's bona fides in his application for patent for said tract.

(Sgd.) IGNATIUS MULLEN.

Subscribed and sworn to before me this 17th day of Aug., 1907.

(Sgd.) H. K. LOVE, *Spl. Agt., G. L. O.*

True copy: J. M. S.

AFFIDAVIT OF APPLICANT.

Ignatius Mullen, of Seward, Alaska, being first duly sworn according to law, deposes and says that he is the identical person of that name who made, by power of attorney to one Clarence Cunningham, a coal location of 159.201 acres of public land in the Kayak Recording District, Alaska, under the act of Congress approved April 28, 1904, said coal claim being known of record as the Lobster coal claim; that he is the same person who applies to enter said claim under U. S. coal land survey No. 41.

That said location was made for the sole use and benefit of the affiant, and has ever since so remained his, and in his exclusive control; that at no time prior to location, or at such time, or since, has affiant entered into any agreement, expressed or implied or pledged himself by promise or otherwise, expressed or implied, by which the title to said land, or any part thereof, or interest therein, is to pass to any other person or association whatsoever; that in event said claim goes to entry in the U. S. land office at Juneau, Alaska, and the receiver's receipt for the purchase price issues, he will not be under any contract or obligation or promise to sell or convey said tract to any person or persons or association, or to put same into any company or joint holding for any purpose, or to otherwise dispose of same, but will be free in every way to hold said tract, to lease or sell it at any future time.

That he does not now know any person or persons or association that intend or contemplate the leasing or the purchase of said tract.

That a valuable vein of merchantable coal has been developed by the affiant, through his said agent, upon said tract, as he verily believes; that the affiant has expended in making said location, in charges for services of said agent, in developing said vein of coal, and in expenses incident to the acquirement of title the sum of ——— dollars; that said sum was his own personal funds, or borrowed for such purpose, but without any agreement or understanding that the person loaning such or anyone other than the affiant, should have any interest in or control over said tract.

That this affidavit is made for the purpose of additional evidence of the affiant's bona fides in the matter of said coal location and proposed entry, and for use as part of the record in said application.

DISTRICT OF ALASKA, Juneau Land District, ss:

P. M. Mullen, being first duly sworn according to law, deposes and says that he is the father of Ignatius Mullen, who made coal cash entry No. 5 on March 13, 1907, for the Lobster coal claim, being U. S. coal-land survey No. 41, in the Kayak recording district, Alaska; that he has not, nor has he ever had, any interest in said coal claim; that his son, the said Ignatius Mullen, is and at all times has been fully able financially and otherwise to perform any preliminary development and exploration upon his said coal claim, to pay all the expenses incident thereto, and to make payment to the United States for the land in said claim.

That said Ignatius Mullen, his son, has for more than eight years been employed upon good salary, and he has, from his savings during that time and from other yearly income which he has in his own right, accumulated more than sufficient money to pay for all expenses in connection with said claim.

That I have never loaned or advanced the said Ignatius Mullen any money whatsoever for the purpose of expenditure or payment upon said coal claim; that the said Ignatius Mullen to my own knowledge had at all times sufficient money to meet all demands in connection therewith, and to the best of my belief he has not entered into any contract or combination to trade, sell, or otherwise to dispose of his said claim or any interest therein.

P. M. MULLEN.

Subscribed and sworn to before me this 11 day of November, A. D. 1907.

H. K. LOVE, *Spl. Agt., G. L. O.*

"P" 42299. Name of defendant: Mullen, Ignatius. Land district: Juneau (Alaska). Nature of case: See 38231. Kind and number of entry: Coal entry 5. Date: 8, 15, 07. Last action: 205267-07 favorable rept. S. A. report. Office action Jan. 4, 08. Clear listed to Div. N. 1, 11, 08. Referred to Div. N. J. F. M.

MINERAL DIVISION.

C. E., 5; land district, Juneau, Alaska.

Name of claim, Lobster coal claim.

Kind of deposit, coal.

Locator, Clarence Cunningham for Ignatius Mullen.

Date of location, July 21, 1904 } Coal D. G. 180, filed Oct. 10, 1905.
 Location recorded, April 14, 1905 }
 Survey made, April 19 to 26, 1905, No. 41.
 Survey approved, Dec. 16, 1905.
 Improvements, \$1,600.
 Connection, U. G. L. M.
 Posting on claim, March 17, 1906.
 Application for patent, Feby. 21, 1906.
 Agreement of publisher, correct.
 Publication, April 21 to June 23, 1906.
 Continuous posting, March 17, 1906, to June 30, 1906.
 Posting in office, Feby. 21, 1906, to March 13, 1907.
 Date of entry, March 13, 1907.
 Claimant, Ignatius Mullen.
 Citizenship, native.
 Area entered, 159.201; amount paid, \$1,592.01.
 Nonmineral proof, O. K.

C. A. HOLLINGSWORTH, *Examiner.*

JANUARY 13, 1908.

DEPARTMENT OF THE INTERIOR—GENERAL LAND OFFICE.

In the matter of coal entry No. 5, C. D. S. 180, for land lying in Juneau, Alaska, and district, Ignatius Mullen, entryman.

To the COMMISSIONER OF THE GENERAL LAND OFFICE:

You will please enter my appearance as attorney for the above entry and entryman.

JOHN P. GRAY,
Attorney for Entryman,
Residence and Post-Office Address, Wallace, Idaho.

The CHAIRMAN. Are you through with the witness?

Mr. VERTREES. Not quite. Senator Fletcher, will you be so kind as to let me have that letter you called his attention to with the initials on it?

Senator FLETCHER. That was not a letter; it was in the Senate document.

Mr. VERTREES. You were reading from the document? Well, I have that.

Senator FLETCHER. Page 205.

Mr. VERTREES. You stated that the position of the initials on a communication sometimes was significant and had meaning?

Mr. HELTMAN. Yes, sir.

Mr. VERTREES. Explain to the committee what you mean by that.

Mr. HELTMAN. The initials on a letter if on the upper left-hand corner indicate that the letter was written by the one having those initials; the chief of the division initials the letter in the upper right-hand corner of the first page. Some years ago the board of law review placed their initials on the upper right-hand corner.

Mr. VERTREES. What would the presence of the initial, then, in the place you have stated indicate?

Mr. HELTMAN. That he had approved the letter; read it and approved it.

Mr. VERTREES. You mentioned the names of Mr. Casey and Mr. McDermitt in answer to a question of Senator Fletcher. Who were they, Mr. Helzman?

Mr. HELTMAN. They were examiners in the Mineral Division of the Land Office.

Mr. VERTREES. How many examiners did you have?

Mr. HELTMAN. I think probably about 18.

Mr. VERTREES. That is all.

The CHAIRMAN. That is all. You are discharged, Mr. Heltman. Call your next witness.

(The witness was thereupon excused.)

TESTIMONY OF MR. GEORGE OTIS SMITH.

Mr. George Otis Smith, having been first duly sworn by the chairman, testified as follows:

Mr. VERTREES. I understand I am now addressing Mr. George Otis Smith?

Mr. SMITH. Yes, sir.

Mr. VERTREES. Where do you live, Mr. Smith?

Mr. SMITH. In Washington.

Mr. VERTREES. What is your age?

Mr. SMITH. 39.

Mr. VERTREES. What position in the service of the Government of the United States do you now hold?

Mr. SMITH. Director of the United States Geological Survey.

Mr. VERTREES. That is, you are the chief of that department?

Mr. SMITH. I am.

Mr. VERTREES. Or, rather, of that bureau, I will call it.

Mr. SMITH. I am.

Mr. VERTREES. How long have you been chief of the Geological Survey?

Mr. SMITH. Since May, 1907.

Mr. VERTREES. How long have you been in the service of the Government of the United States, and in what capacities?

Mr. SMITH. Since 1893, when I was a field assistant in the Survey; in 1896 I took the civil-service examination and was appointed assistant geologist; since that time I have been geologist, and since 1907 director.

Mr. VERTREES. What practical experience have you had in the field?

Mr. SMITH. Up to my appointment as director I was engaged in geological surveys every season.

Mr. VERTREES. In what regions or parts of the United States?

Mr. SMITH. In 1893 and 1894 in the Lake Superior iron district, and eight years in the State of Washington, in the Cascade Mountains, with the exception of 1897, when I was in the Tintic mining district of Utah, making ten years in the West. From 1903 to 1906 I was engaged in general work in the East. Since becoming director I have been in the West every season visiting the field parties.

Mr. VERTREES. What do you mean by visiting field parties?

Mr. SMITH. Trying to keep in touch with the different kinds of work of the survey, going into camp, etc.

Mr. VERTREES. How many Geological Survey parties do you keep ordinarily in the field?

Mr. SMITH. Why, we have, I suppose, over one hundred parties. I try to visit one or more parties of each kind, that represent each kind of work.

Mr. VERTREES. Now, I will ask you again to explain what you mean by kinds of work, Mr. Smith?

Mr. SMITH. We have under the Geological Survey geologic work, topographic work, and hydrographic work. And under the geologic work, of course, we have several kinds of public-land work, and then under the topographic work parties are working on different kinds of country and making different kinds of maps.

Mr. VERTREES. Mr. Smith, there has been a report mentioned in this inquiry known as the Wingate report.

Mr. SMITH. Yes, sir.

Mr. VERTREES. It is found on page 1043 of the record. What do you know about that?

Mr. SMITH. I first knew of it when the request came to me as the Director of the Survey to send a geologist to examine the Cunningham claims in Alaska. I knew at that time——

The CHAIRMAN. What page is that, Mr. Vertrees?

Mr. VERTREES. Page 1043.

The CHAIRMAN. Of the testimony?

Mr. VERTREES. Yes, sir.

Mr. SMITH. I heard at that time that there had been two reports made, one at the instance of the Forestry Service and the other at the instance of the Land Office, and that the two experts did not agree; and it was proposed that a geologist from the survey go up and arbitrate. At that time I heard of this report, and from what I had already heard of Alaska I was surprised that there was a disagreement. I later heard of the report through the geologist when he returned from Alaska, Geologist Fisher, and I have read the report which appears in the record.

Mr. MADISON. Where is it; at what page?

Mr. SMITH. At page 1043.

Mr. MADISON. That is the Wingate report?

Mr. VERTREES. Yes; the Wingate report.

The CHAIRMAN. The Wingate report and Fisher's report is on page 1044.

Mr. SMITH. Mr. Wingate, as I understood, represented the Forestry Service in his examination.

Mr. VERTREES. From your knowledge of conditions, is that a correct or an incorrect report?

Mr. SMITH. My knowledge of conditions in Alaska is gained from conversations with my associates and with reading the reports made by them on Alaska. I have never been in Alaska, but based upon that information I am at a loss to understand how a man could go into the Cunningham claims and report them as noncoal. Mr. Wingate's words are:

All of the claims east of Clear Creek toward Canyon Creek showed "blossoms" and small croppings of carbonaceous shale. The measures have been badly flexed and broken and basalt dikes are much in evidence. As a commercial coal proposition, the land is worthless. The same is true as to all of the claims in the Cunningham group.

My understanding of conditions there are that even a layman would see coal all about him; it is well exposed. The layman would be apt to overestimate rather than underestimate the amount of coal and the value of the land as a commercial proposition.

The CHAIRMAN. Who is this Wingate?

Mr. SMITH. Why he signs himself C. E. and M. E. I suppose that means civil and mining engineer.

The CHAIRMAN. Does he belong to the Forestry Bureau, or did he belong to it?

Mr. SMITH. He was surely in their employ at that time.

Mr. VERTREES. He did not belong to your bureau or service?

Mr. SMITH. No, sir; and he would not have belonged after making a report like that, either, if he had been employed.

Mr. VERTREES. Now, Mr. Smith, you are of course acquainted with the Secretary of the Interior, Mr. Ballinger?

Mr. SMITH. Yes, sir.

Mr. VERTREES. When did you make his acquaintance?

Mr. SMITH. I first made Mr. Ballinger's acquaintance in 1907, when he was Commissioner of the General Land Office. I was then appointed director, although I entered upon the office May 1. In April and May I had several conferences with Commissioner Ballinger, both in his own office and in the office of Secretary Garfield.

Mr. VERTREES. On what subjects?

Mr. SMITH. On the subject of surveys—land surveys—on the subject of coal-land regulations, and also on the subject of mineral-claim examinations in the national forests.

Mr. VERTREES. What was the character of the regulations that Mr. Ballinger insisted in those meetings should be made?

Mr. SMITH. Why, I had conferences, together with some of the other geologists of the Survey, with the officers of the Land Office at the request of Secretary Garfield, and at that time I gained the same impression that I believe that Mr. Brooks has testified he gained—that he was rather strict in his construction of the law.

We also had conferences on the general subject of interpretation of the mineral laws. The mineral laws are somewhat out of date and I felt that they should be construed in the light of present-day scientific knowledge. Much of what we know about ore deposits has been learned since the mineral laws have been put on the statute books. I discussed those points with Commissioner Ballinger and he was always very sympathetic with my attitude in the matter, but he said he could not go further than the law allowed him to go, and he expressed his desire at that time that there should be an amendment of the law that would provide for the very thing that I mentioned. I felt that at that time he was rather strict in his construction of the law. He was not helping out the operator, the bona fide prospector, as I felt he should be helped out. That was in 1907.

Mr. VERTREES. Were there any discussions then as to an arrangement as to examinations of mineral claims in the national forests and who should do it?

Mr. SMITH. Yes, sir—

Mr. VERTREES. Whether the Geological Survey or the Forest Service or the Reclamation Service should do it?

Mr. SMITH. That spring the question was up for discussion regarding the examination of mineral claims in the national forests to determine whether they were bona fide claims or whether fraudulent.

In that discussion the Secretary called into conference—Secretary Garfield called into conference—Commissioner Ballinger, Forester Pinchot, myself, and, I believe, also Commissioner Dennett at one

time. The Forester, Mr. Pinchot, had already indicated to me his desire that this work should be done by the Geological Survey rather than the Forest Service, and the matter was somewhat critical at that time, because we were having trouble with our accounts in the Treasury Department. The preceding year several geologists or field men, although they were not expert geologists, had been transferred or detailed to the Forest Service and their expenses paid by the Forest Service in the examination of certain claims in the West; and that work was done under my predecessor. I was having trouble in getting the account settled in the Treasury Department, the comptroller holding that the employee of one department could not be detailed to another department. He rendered the decision on May 7, 1907, on this subject and held adversely to the proposition as put up by the Forest Service and the Interior Department. That was the occasion of the interview on May 8, 1907, at which Comptroller Tracewell was called over to the Interior Department and the case was stated—stated rather strongly—to him and he was asked to reconsider his decision. He reconsidered the decision and reaffirmed it in his decision of May 27, 1907, holding that the Geological Survey could not do work for the Forest Service under the appropriation which had been called to his attention.

Mr. VERTREES. Have you those opinions?

Mr. SMITH. Yes; I have that of May 2.

Mr. VERTREES. What follows later with reference to those opinions, Mr. Smith?

Mr. SMITH. Why, the May 27 opinion was adverse, and I supposed that the matter would stop there, but it was further taken up by the Forest Service. This decision of May 27 is not the one quoted by Mr. Pinchot in his letter to the President. It happens that there were three decisions on that date, all referring to cooperative work between the Geological Survey and the Department of Agriculture, and two of them were adverse decisions and one was favorable.

Mr. VERTREES. Mr. Pinchot quoted the favorable one, did he?

Mr. SMITH. Yes, sir.

Mr. VERTREES. And the two adverse ones he has not said anything about?

Mr. SMITH. Except the one relating to this work of the national forest. Oh, he has not known?

Mr. VERTREES. Yes.

Mr. SMITH. No; not in the present discussion.

Mr. VERTREES. Will you file all those opinions, if you have copies of them, to the end that they may be printed?

The CHAIRMAN. Both of those opinions?

Mr. SMITH. Yes, sir.

The CHAIRMAN. They are admitted.

Mr. VERTREES. The opinion I refer to is already referred to on page 1225 of the record.

The CHAIRMAN. There is one opinion, the last one, that is not in the record.

Mr. SMITH. I think none of them is in the record.

Mr. VERTREES. Only in extract.

Mr. SMITH. Only an extract of the Forester's letter to the President.

The CHAIRMAN. They will be printed.

(The opinions are as follows:)

CCM 7.

TREASURY DEPARTMENT,
OFFICE OF COMPTROLLER OF THE TREASURY,
Washington, May 2, 1907.

The Honorable the SECRETARY OF AGRICULTURE.

SIR: In your communication of April 24, 1907, you request my decision of a question which you therein present as follows:

"I have the honor to request your decision upon the following questions: May the Secretary of Agriculture, out of the appropriation 'General expenses, Forest Service,' * * * to protect, administer, improve and extend the national forest reserves' (act of June 30, 1906, 34 Stat., 683) or the appropriation raised by section 5 of the act of February 1, 1905 (33 Stat., 628) for the 'protection, administration, improvement and extension of the federal forest reserves,' pay the expenses of geologists employed by the Geological Survey of the Department of the Interior, to examine mineral claims in forest reserves with a view to securing the cancellation of fraudulent claims, such geologists being wholly under the control of and paid by the Department of the Interior?"

"It is provided by section 5 of the act transferring the administration of the forest reserves from the Department of the Interior to the Department of Agriculture, approved February 1, 1905 (33 Stat., 628) that the special fund raised by that section shall be 'available until expended as the Secretary of Agriculture may direct for the protection, administration, improvement, and extension of the federal forest reserves.'

"The agricultural appropriation act of June 30, 1906 (34 Stat., 683) makes an appropriation 'for all expenses necessary to protect, administer, improve, and extend the national forest reserves.'

"Section 1 of the transfer act of February 1, 1905 (33 Stat., 628) provides:

"The Secretary of the Department of Agriculture shall, from and after the passage of this act, execute or cause to be executed all laws affecting public lands heretofore or hereafter reserved under the provisions of section twenty-four of the act entitled 'An act to repeal the timber-culture laws, and for other purposes,' approved March third, eighteen hundred and ninety-one, and acts supplemental to and amendatory thereof, after such lands have been so reserved, excepting such laws as affect the surveying, prospecting, locating, appropriating, entering, relinquishing, reconveying, certifying, or patenting of any such lands.'

"Before the passage of the transfer act it was the practice of the Department of the Interior to have the forest officers report upon claims to land within the forests, with a view to securing the cancellation of illegal claims. In order that the purpose for which the transfer act was passed, namely, the more efficient administration and protection of the forest reserves, might be carried out, the President on May 17, 1905, instructed the Secretary of the Interior as follows:

"In view of the need for the fullest cooperation between the departments of the Interior and of Agriculture in their respective powers and duties over forest reserves and forest reserve lands, I have just written to the Secretary of Agriculture as follows:

"I would like to have you return findings of fact in all cases referred to you by the Secretary of the Interior, and take prompt action in all cases of claims or contests with regard to land within forest reserves. Please do not fail to report to the Secretary of the Interior every action taken in your department which affects him in the administration of the public lands. The situation calls for the fullest cooperation between your departments in your respective powers and duties over forest reserves and forest-reserve lands."

"In deciding any question relating to rights of way or other similar matters within forest reserves, I shall be glad if you will refer to the Secretary of Agriculture all questions of fact, and accept his findings with regard to such facts. The Secretary of Agriculture has special facilities for getting at the real situation on the ground as to settlement, etc., in the forest reserves. Therefore, I wish you would also have the local land office refer all claims, applications for mineral entry, and final proofs for land within forest reserves to you before taking any action which could give the applicant a disposable title to the land, in order that you may give the Secretary of Agriculture the opportunity of presenting to you any facts or arguments bearing upon them. All valid claims affecting forest reserve land must of course be allowed when properly proven, but full force should be given to the testimony and arguments of the Secretary of Agriculture who, as the direct administrative officer of the reserves, will be seriously affected by your decision.

"I am asking the Secretary of Agriculture to use special care to report to you any action taken in his department affecting you in the administration of the public lands, and I need not ask you to follow the same course in whatever relates to forest reserves."

"The division of jurisdiction prescribed by the transfer act of February 1, 1905, makes it absolutely essential that the Department of the Interior and the Department of Agriculture cooperate heartily and vigorously for the protection of the forest reserves. The necessity for such cooperation is constantly apparent and is illustrated by the following facts: One small group of individuals, acting together, have located placer mining claims upon 275,000 acres, heavily timbered, in the Plumas Forest Reserve. Most of these claims are believed to be fraudulent, and to have been located for the purpose of securing the timber. Under the mining laws a placer claimant has the right to remove the timber from his claim as a preliminary to working it and may sell the timber so removed. By section 1 of the transfer act of February 1, 1905, the Secretary of Agriculture is charged with the duty of protecting the timber on these 275,000 acres from fraudulent or other wrongful private appropriation. By the same section the Secretary of the Interior is charged with the duty of protecting this same 275,000 acres from fraudulent or other unlawful private location or other appropriation. It is obvious that the success of fraudulent locations of this character results in two distinct wrongs to the United States: In the first place, the Government is defrauded of title to the land, and this it is the duty of the Department of the Interior to prevent; in the second place, the Government is defrauded of the value of the timber and of its temporary use of and profits from the land, such as grazing fees, agricultural and other rentals, fees for the use of power sites, etc., and this it is the duty of the Department of Agriculture to prevent. The fraud consists in appropriating as mineral, land which is not mineral in character and upon which no discovery such as is required by the mineral laws for such appropriation has been made. To detect and prevent the fraud it is often necessary to employ skilled and competent geologists, who must go upon the land, carefully examine it in detail, and report upon its mineral or non-mineral character. In the Geological Survey the Department of the Interior has a body of skilled geologists peculiarly fitted to do this work in the best and most efficient manner. In order to defeat the claims it is necessary that proof of the non-mineral character of the land should be made before the local land office, and from the decision of that office there is an appeal first to the Commissioner of the General Land Office and finally to the Secretary of the Interior.

"It is obvious that the Secretary of the Interior is empowered by section 1 of the transfer act of February 1, 1905, to send geologists from the Geological Survey to examine such fraudulent claims; and that their report should be used in proceedings brought by the Land Department before the local land office to cancel the claims, for in so doing the Secretary of the Interior would merely be executing laws affecting the locating and appropriating of public lands reserved as forest reserves. It is also obvious that the Secretary of Agriculture is empowered by the same section to employ geologists to examine such fraudulent claims, and that the evidence of such geologists as to the nonmineral character of the land could be reported by the Department of Agriculture to the Department of the Interior for the purpose of securing the cancellation of the claims, for in so doing the Secretary of Agriculture would be executing those laws affecting the public lands reserved as forest reserves, which concern the protection of the timber and the other temporary interests in the land.

"Since either department could conduct and pay for such a geological investigation, and since it is the duty of each to do so, and since the cooperation of the two departments in this common duty will result in the more efficient and economical performance of the duty, it necessarily follows that the two departments can cooperate in the performance of the common duty. In accordance with the spirit of the President's letter to the Secretary of the Interior, dated May 17, 1905, the exact method and measure of cooperation is a matter of administrative detail which is practically left to the judgment of the two secretaries concerned. Each department might employ one geologist, if two were needed, each paying the expenses of the one employed by it, or the Department of the Interior might employ and pay the expenses of both geologists and the Department of Agriculture employ and pay the expenses of forest officers, laborers, or other persons whose services were needed in the investigation; or, the departments might share the expenses of the investigation in any way not forbidden by specific law that seemed to them most economical and efficient for the accomplishment of the desired result. It would seem to follow that the Department of Agriculture, out of its appropriation 'to protect, administer, improve, and extend the national forest reserves,' could share the burden of the geological investigation by paying the expenses of geologists, whose salaries are paid by the Department of the Interior. In this connection I respectfully call attention to your decision of January 28, 1907 (appeal No. 13089), and the language used by you on page 10 of a manuscript copy of that decision, on file in the Forest Service in this department:

"I am of the opinion, therefore, that the head of one department has no authority, either with or without the consent of the head of another department, to detail a

clerk or employee of his department to duty in another department not connected with the duty of the department from which detailed. Neither has the head of one department any right to order a clerk or employee in a department of which he is not the head to perform duty in or for the department of which he is the head.'

"Though your language above quoted concerned a case where a detail of a clerk from one department to another had been attempted, the words of limitation used by you in expressing the lack of authority to make such a detail seem entirely applicable to the question submitted by this letter for your decision, although no detail from one department to another is involved, for if the prohibition of such details is limited to cases where the new duty of the detailed clerk is 'not connected with the duty of the department from which detailed,' still more must that limitation take effect upon any rule or practice against the payment by one department of the expenses of an employee of another department who is engaged upon a duty intimately connected with the duty of both departments, but remains in his own department.

"The effect of this limitation upon the authority to make details is again clearly manifested by your language on page 14 of the same copy of the same decision:

"The duty performed by Mr. Rhees was not a duty required by the Treasury Department, and was not a duty to which he could have been lawfully assigned independently of the request of the Secretary of the Interior.'

"A prompt decision of the question now submitted to you is urgently needed, because, acting upon the view of my powers and duties in this matter which has been above set forth, I have authorized the expenditure of money for this purpose, and certain items for such expense in the accounts of the special fiscal agent of the Forest Service for the December quarter have been questioned by the Auditor for the State and Other Departments. From informal inquiry at the auditor's office, it appears that his action rests upon his interpretation of your decision of January 28, above cited. The facts as to the authorization of such expense are as follows:

"Geologists J. G. Gillett, James A. Dorsey, and W. L. Walker, employees of the Geological Survey in the Department of the Interior, were sent into the field to make a geological examination of certain lands embraced in alleged illegal mineral land claims in several of the national forests. They acted under the authority of the Secretary of the Interior contained in his letter of July 26, 1906, attached to voucher No. 4613 of L. G. Gillett. This authority is explained by a letter of the Secretary of the Interior to the Commissioner of the General Land Office, dated August 20, and of the Commissioner of the General Land Office to the Secretary of the Interior, dated August 21 (copies enclosed). On November 3, Mr. Sydney H. Ball was substituted for Mr. James A. Dorsey by the Acting Director of the Geological Survey. Copy of the acting director's letter to the Secretary of the Interior, dated November 3, 1906, is enclosed.

"On October 17 the Secretary of Agriculture requested the Secretary of the Interior to authorize the Geological Survey to send the geologists to such national forests as might be agreed upon from time to time by the Geological Survey and the Forester, and on November 1 the Secretary of the Interior advised the Secretary of Agriculture that he had partially complied with this request. Copies of these two letters and of the letter of the Secretary of the Interior to the Director of the Geological Survey, dated November 1, are enclosed.

"On November 17 the Secretary of Agriculture requested that general authority be given the Geological Survey in this matter, and this was granted by the letter of the Secretary of the Interior to the Secretary of Agriculture and to the Director of the Geological Survey, dated December 5. Copies of these three letters are also enclosed.

"The letters of the Secretary of the Interior, dated August 20, the Commissioner of the General Land Office, dated August 21, and of the Secretary of Agriculture, dated November 17, which have been referred to, all show that the geological examination made by the geologists named was carried on under the direction of the Geological Survey, and that the Forest Service cooperated in the investigation by lending the assistance of some of its officers and by paying the actual expenses of the geologists.

"The geologists in all of these investigations have acted under the directions of the Director of the Geological Survey and have made their reports to him. Although the direction to the geologists has been referred to in some of the correspondence as a detail, it has not been a detail from the Geological Survey or the Interior Department but is a mere direction for the work of that department.

"The letter of the Secretary of the Interior, dated December 5, authorizing the Director of the Geological Survey to detail the geologists to the Forest Service should be considered in connection with the letter of November 17, requesting that they make the examination, and is also explained by the fact that the Director of the Geological Survey did not in fact detail the geologists to the Forest Service. They have next

been under the control of the Forester, but have acted entirely under the direction of the Geological Survey, and their reports, as has been said, have been made to the Geological Survey.

"Plans are now being made for the continuance of geological examinations of this kind during the season now opening in many of the national forests. It is necessary to increase the force of geologists and to send them into the field without delay. This can not be done until the question as to my authority to pay the expenses of geologists employed by the Department of the Interior has been settled. I, therefore, have the honor to request an early decision of the question by you."

Section 2319 of the Revised Statutes provides for the occupation and purchase by citizens of lands belonging to the United States containing valuable mineral deposits. Section 2325, as amended by the act of June 22, 1880 (21 Stat., 61) provides how a patent for such lands may be obtained.

The preliminary proceedings for the procurement of a patent for lands are called entries.

The meaning of the term "entry" as used in the laws relating to public lands is indicated in section 7 of the act of May 10, 1800. (2 Stat., 75-76.) It is therein provided that it shall be the duty of registers of land offices "to receive and enter on books kept for that purpose only" applications for the purchase of land, on the payment of a fee and the production of a receipt from the Treasurer of the United States or a receiver of public moneys for a portion of the purchase money. It is also made the duty of the register of the land office to give the applicant a copy of the entry and a certificate for subsequent and final payments.

On subsequent proof, prior to the issue of a patent, that the land described in an entry is not subject to appropriation or that the entry was fraudulent, the Secretary of the Interior may direct the cancellation of the entry. (11 Pub. Land Dec., 484, 489.)

Section 453 of the Revised Statutes provides as follows:

"Sec. 453. The Commissioner of the General Land Office shall perform, under the direction of the Secretary of the Interior, all executive duties appertaining to the surveying and sale of the public lands of the United States, or in anywise respecting such public lands, and also such as relate to private claims of land, and the issuing of patents for all grants of land under the authority of the Government."

The act of June 30, 1906 (34 Stat., 724), makes appropriations for the Department of the Interior for the following objects:

"To meet the expenses * * * of protecting public lands from illegal and fraudulent entry or appropriation." * * *

"For expenses of hearings held by order of the Commissioner of the General Land Office to determine whether alleged fraudulent entries are of that character or have been made in compliance with law." * * *

It thus appears that the Secretary of the Interior is given full authority by these laws to investigate the question whether any entries made for mineral lands in forest reserves, for which patents have not been granted, are fraudulent, and if they are adjudged to be so to cancel them; and I think that his authority to make these investigations is exclusive.

Section 1 of the act of February 1, 1905, referred to by you, which provided for the transfer of forest reserves from the Department of the Interior to the Department of Agriculture, authorized the Secretary of Agriculture to execute all laws affecting public lands set apart as forest reservations, "excepting such laws as affect the surveying, prospecting, locating, appropriating, entering, relinquishing, reconveying, certifying, or patenting of any of such lands."

By the terms of this provision the authority conferred upon the Secretary of Agriculture does not embrace the execution of the laws relating to entries for, or the cancellation of entries for, mining or other public lands.

Section 5 of said act also provides that all moneys received from the sale of any "products or the use of any land or resources" of said forest reserves shall for a period of five years constitute a "special fund" available, as the Secretary of Agriculture may direct, for the "protection, administration, improvement, and extension" of said forest reserves.

The act of June 30, 1906, to which you also refer, makes an appropriation for these same objects.

I think the duties imposed upon the Secretary of Agriculture by the act of February 1, 1905, concerning forest reservations and those imposed upon the Secretary of the Interior by the laws relating to public lands are quite distinct, and I am of opinion that the appropriations for the Department of the Interior for expenses of protecting public lands from illegal and fraudulent entry or appropriation and for expenses of hearings to determine whether land entries are fraudulent or not make more specific

provision for these objects than is made by the special fund provided for by section 5 of the act of February 1, 1905, or the appropriation made by the act of June 30, 1906, for the "protection, administration, improvement, and extension" of forest reserves, and are therefore exclusively applicable to these objects.

This conclusion does not prevent the cooperation of the Secretary of Agriculture and the Secretary of the Interior with each other in the execution of the laws, the execution of which is confined to each of them, respectively, as directed by the President, but I do not think such cooperation requires or authorizes the use of the appropriation for the "protection, administration, improvement, and extension" of forest reserves for the investigation of land entries for the purpose of determining whether they are fraudulent or not.

The act of June 30, 1906 (34 Stat., 727-728), makes appropriations for four geologists as scientific assistants of the Geological Survey; for geological surveys in various portions of the United States; for the preparation of the report of the mineral resources of the United States; and for continuation of the survey of the public lands that have been or may hereafter be designated as forest reserves. These appropriations are under the control of the Secretary of the Interior, who has authority in his discretion to detail any geologist or other employee employed under any of said appropriations for duty in connection with the investigation of entries of mineral lands in any forest reserve, for the purpose of determining whether any such entry is fraudulent or not. But I do not think that any geologist or employee so detailed would be subject to direction by the Secretary of Agriculture, or that the compensation or expenses of such geologist or employee would be payable from the appropriation for protection, administration, etc., of forest reserves.

Respectfully,

R. J. TRACEWELL, *Comptroller*.

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MAY 27, 1907.

The honorable the SECRETARY OF THE TREASURY.

SIR: By your reference dated May 9, 1907, of a communication from the Secretary of Agriculture of the same date, you request my further consideration of a decision rendered by me to him, dated May 2, 1907, in which I held as follows:

"Section 2319 of the Revised Statutes provides for the occupation and purchase by citizens of lands belonging to the United States containing valuable mineral deposits. Section 2325 as amended by the act of June 22, 1880 (21 Stat., 61), provides how a patent for such lands may be obtained.

"The preliminary proceedings for the procurement of a patent for lands are called entries.

"The meaning of the term 'entry' as used in the laws relating to public lands, is indicated in section 7 of the act of May 10, 1800, (2 Stat., 75-76). It is therein provided that it shall be the duty of registers of land offices 'to receive and enter on books kept for that purpose only' applications for the purchase of land, on the payment of a fee and the production of a receipt from the Treasurer of the United States or a receiver of public moneys for a portion of the purchase money. It is also made the duty of the register of the land office to give the applicant a copy of the entry, and a certificate for subsequent and final payments.

"On subsequent proof, prior to the issue of a patent, that the land described in an entry is not subject to appropriation or that the entry was fraudulent, the Secretary of the Interior may direct the cancellation of the entry. (11 Pub. Land Dec., 484, 489.)

"Section 453 of the Revised Statutes provides as follows:

"(Sec. 453. The Commissioner of the General Land Office shall perform, under the direction of the Secretary of the Interior, all executive duties appertaining to the surveying and sale of the public lands of the United States, or in any wise respecting such public lands, and also, such as relate to private claims of land, and the issuing of patents for all grants of land under the authority of the Government."

"The act of June 30, 1906 (34 Stat., 724), makes appropriation for the Department of the Interior for the following objects:

"To meet the expenses * * * of protecting public lands from illegal and fraudulent entry or appropriation. * * *

"For expenses of hearings held by order of the Commissioner of the General Land Office to determine whether alleged fraudulent entries are of that character or have been made in compliance with law. * * *

"It thus appears that the Secretary of the Interior is given full authority by these laws to investigate the question whether any entries made for the mineral lands in forest reserves, for which patents have not been granted, are fraudulent, and if they

are adjudged to be so to cancel them; and I think that his authority to make these investigations is exclusive.

"Section 1 of the act of February 1, 1905, referred to by you, which provided for the transfer of forest reserves from the Department of the Interior to the Department of Agriculture, authorized the Secretary of Agriculture to execute all laws affecting public lands set apart as forest reservations 'excepting such laws as affect the surveying, prospecting, locating, appropriating, entering, relinquishing, reconveying, certifying, or patenting of any of such lands.'

"By the terms of this provision the authority conferred upon the Secretary of Agriculture does not embrace the execution of the laws relating to entries for, or the cancellation of entries for, mining or other public lands.

"Section 5 of said act also provides that all moneys received from the sale of any 'products or the use of any land or resources' of said forest reserves shall for a period of five years constitute a special fund, available, as the Secretary of Agriculture may direct, for the 'protection, administration, improvement, and extension of said forest reserves.'

"The act of June 30, 1906, to which you also refer, makes an appropriation for these same objects.

"I think the duties imposed upon the Secretary of Agriculture by the act of February 1, 1905, concerning forest reservations, and those imposed upon the Secretary of the Interior by the laws relating to public lands, are quite distinct, and I am of the opinion that the appropriations for the Department of the Interior for expenses of protecting public lands from illegal and fraudulent entry or appropriation, and for expenses of hearings to determine whether land entries are fraudulent or not, make more specific provision for these objects than is made by the special fund provided for by section 5 of the act of February 1, 1905, or the appropriation made by the act of June 30, 1906, for the 'protection, administration, improvement, and extension' of forest reserves, and are therefore exclusively applicable to those objects.

"This conclusion does not prevent the cooperation of the Secretary of Agriculture and the Secretary of the Interior with each other in the execution of the laws, the execution of which is confined to each of them, respectively, as directed by the President, but I do not think such cooperation requires or authorizes the use of the appropriation for the 'protection, administration, improvement, and extension' of forest reserves for the investigation of land entries for the purpose of determining whether they are fraudulent or not.

"The act of June 30, 1906 (34 Stat., 727-728), makes appropriations for four geologists, as scientific assistants of the Geological Survey; for geological surveys in various portions of the United States; for the preparation of the report of the mineral resources of the United States; and for continuation of the survey of the public lands that have been or may hereafter be designated as forest reserves. These appropriations are under the control of the Secretary of the Interior, who has authority in his discretion to detail any geologist or other employee employed under any of said appropriations for duty in connection with the investigation of entries of mineral lands in any forest reserves, for the purpose of determining whether any such entry is fraudulent or not. But I do not think that any geologist or employee so detailed would be subject to direction by the Secretary of Agriculture, or that the compensation or expenses of such geologist or employee would be payable from the appropriation for protection, administration, etc., of forest reserves."

In his communication to you, the Secretary of Agriculture says:

"If this decision stands it can not fail to have a very detrimental effect upon the public interests by preventing the detection of public land frauds in national forests, and the Government will be defrauded of title to vast areas of very valuable forest land."

If the decision is erroneous, and a compliance therewith will operate to prevent the detection of land frauds in national forests, it might properly be said that the decision would have such detrimental effect. But if the decision is a proper interpretation and application of the laws enacted by Congress, that effect should be ascribed to the law and not to the decision. But I am not aware of anything in the law as interpreted in the decision that should operate to prevent the detection of land frauds in national forests, unless it is that Congress has not appropriated a sufficient sum of money to enable the Secretary of the Interior to fully execute the provisions of law which authorize him to make the necessary investigations to determine that entries for mineral lands have been fraudulently made in forest reserves.

If this is true, of which I have no knowledge, I have no power to supply the deficiency, or to authorize the use of any other appropriation not applicable thereto.

The particular point decided by me was that the Secretary of Agriculture is not authorized to pay from moneys appropriated for protection, administration, etc., of

forest reserves the expenses of geologists of the Geological Survey of the Interior Department while employed by the Secretary of the Interior in the investigation of entries of mineral lands in forest reserves, for the purpose of determining whether such entries are fraudulent, with a view to their cancellation.

I have carefully reconsidered this point and I find no reason to change the conclusion I reached in my former decision.

The act of February 20, 1896 (29 Stat., 11), provides that certain forest reservations in the State of Colorado shall be open to the location of mining claims thereon for gold, silver, and cinnabar, and that title to such claims may be acquired in the same manner as that for mining claims upon the other mineral lands of the United States (see sec. 2319, Revised Stats., *et seq.*), and that owners of valid mining locations under said act are authorized to fell and remove for actual mining purposes in connection therewith any timber growing on the land claimed. I think these provisions are declaratory of the general law.

The act of June 4, 1887 (30 Stat., 35), provides that it is no. the purpose of the act providing for forest reservations to authorize the inclusion therein of lands more valuable for the mineral therein or for agricultural purposes than for forest purposes.

The question whether public land is mineral, agricultural, or swamp or timber land, for the purpose of entry, is subject to determination by the Commissioner of the General Land Office, and on appeal from him by the Secretary of the Interior. (*Borden v. Northern Pacific Railroad*, 154 U. S., 288, 320.)

The above provisions of law and those cited in my former decision indicate that the lands in forest reserves are open to entry thereon of mining claims in like manner as other public lands, and that the enforcement of the laws governing the making of such entries and their cancellation, where fraudulent, is confided to the Secretary of the Interior.

The act of June 4, 1897, *supra*, also provides that the Secretary of the Interior shall make provision for the protection against destruction by fire and depredations of the forests upon the public lands and forest reservations. The enforcement of these provisions was transferred to the Secretary of Agriculture by section 1 of the act of February 1, 1905 (33 Stat., 628). Section 5 of this act also provides that moneys received from the sale of any products or the use of any land or resources of the forest reserves should constitute a special fund to be expended by the Secretary of Agriculture for the protection, improvement, and extension of forest reserves. The appropriation made by the act of June 30, 1906 (34 Stat., 683), also authorizes expenditures for "administration" of the national forest reserves. But the enforcement by the Secretary of Agriculture of laws relating to "surveying, prospecting, locating, appropriating, entering, relinquishing," etc., any such lands, which include the investigation of fraudulent entries, was expressly excepted from the authority therein transferred and granted to the Secretary of Agriculture. The granting of rights of way across forest reserves by the Secretary of the Interior is also authorized by said act.

I think a comparison of the foregoing provisions indicates that the powers and duties of the Secretary of the Interior and of the Secretary of Agriculture in connection with forest reserves are clearly distinct. They may be summarized as follows:

1. The powers and duties of the Secretary of the Interior pertain to surveying the lands, granting rights of way over them, and supervising entries of claims and granting patents for lands, including the investigations and cancellation of fraudulent entries. All of these powers and duties pertain to the title to the lands.

2. The powers and duties of the Secretary of Agriculture pertain to the care, protection, improvement, and extension of the forests, and also to the sale of dead and matured trees and leasing the use of lands for grazing and other purposes. All of these powers and duties pertain to the products of the lands.

In a communication from the Secretary of the Interior to the Secretary of Agriculture, dated June 8, 1905, the following views on one branch of this subject are expressed:

"In further reply to your letter of April 28, 1905, and after an informal conference between the law officer of the Forestry Bureau of your department and the Assistant Attorney-General for this department, I have to advise you that it is believed the respective jurisdictions of the two departments over applications for rights and privileges within forest reserves may be safely defined as follows, namely, that your department is invested with jurisdiction to pass upon all applications under any law of the United States providing for the granting of a permission to occupy and use lands in a forest reserve which occupation or use is temporary in character, and which, if granted, will in no wise affect the fee or cloud the title of the United States should the reserve be discontinued, but that this department retains jurisdiction over all applications affecting lands within a forest reserve the granting of which amounts to an easement running with the land, with the further understanding that any permission or license

granted by your department is subject to any later disposal of the land by this department. Within the limits of the separate jurisdictions herein defined it is believed that the actions of the two departments will proceed harmoniously.

"This department would be pleased to be informed as to whether these views coincide with the views of your department, and whether you have any further suggestions to make in the premises."

(By letter of June 13, 1905, the Secretary of Agriculture expressed his concurrence in the views herein set forth.)

The appropriations made for their respective departments provide for the expense necessary in the exercise and performance of their respective powers and duties, and they are likewise made for distinct objects.

1. The appropriation for the Interior Department providing for expenses of protecting public lands from illegal and fraudulent entry or appropriation has for its object the investigation of entries and the cancellation thereof where fraudulent. The effect of such cancellation is to deprive the entryman of any legal right to occupy the land or to cut timber thereon, whether in forest reserves or other public lands, and operates indirectly to protect the forests from further destruction by illegal entryman.

2. The appropriation for the Department of Agriculture providing for the protection, administration, improvement, and extension of forest reserves has for its object the protection of the forests from destruction by fire and depredations other than the cutting of timber by entryman.

Section 3678 of the Revised Statutes provides as follows:

"All sums appropriated for the various branches of expenditure in the public service shall be applied solely to the objects for which they are respectively made, and for no others."

I think the use of the appropriation for protection, etc., of forest reserves for paying the expenses of investigating entries of mining or other claims, with a view to their cancellation if fraudulent, would be in contravention of the above provisions, and that such use is therefore unauthorized.

Respectfully,

R. J. TRACEWELL,
Comptroller.

CCM 7.

TREASURY DEPARTMENT,
OFFICE OF COMPTROLLER OF THE TREASURY,
Washington, May 27, 1907.

The honorable the SECRETARY OF AGRICULTURE.

SIR: In your communication of May 16, 1907, you request my decision of a question which you therein present, as follows:

"The agricultural appropriation act approved March 4, 1907 (Public, 242, page 29), carries an appropriation of \$25,000, to be immediately available, to survey, ascertain, and report to Congress the area and natural conditions of the watersheds of the southern Appalachian Mountains and White Mountains, with a view to the Government's purchasing and setting apart the same as national forests for the purpose of conserving and regulating the water supply and flow of said streams. I have delegated to the Forest Service of this department the duty of making this survey and report, and a part of the necessary work is the gauging of streams of these watersheds.

"By the sundry civil appropriation acts of June 30, 1906 (34 Stat., 728), and of March 4, 1907 (Public, 253, page 47), an appropriation is made for the Geological Survey for gauging streams and determining the water supply of the United States and the preparation of reports upon the best methods of utilizing the water resources. In pursuance of these acts the Geological Survey will have available in the area of the Appalachian Mountains and White Mountains watersheds a force of hydrographers for continuing the measurements which have been made for several years.

"The stream measurements which are demanded by the needs of the Forest Service will require a supply of the same kinds of instruments and the services of hydrographers with necessary supervision.

"To a considerable extent the location of the gauging stations required under the general appropriation for gauging the streams and for the specific purposes of Forest Service projects are in the same general territory, and the measurements at these several stations can be made by the same person with but little additional expense. Furthermore, there would be but small additional expense to extend the supervision required by the work of gauging streams over the similar work required by the Forest Service.

"To carry on these two works along identical lines under separate supervision will require duplication of work and instruments and involve considerable additional expense to the United States. A large part of the expense is due to traveling, and

in many cases a trip which would cover the stations of the Geological Survey could be extended at small expense to cover those of the Forest Service, while if they were taken separately the cost of travel would be nearly doubled.

"In order to avoid the duplication of work, the unnecessary increase of expense, it is desired that the Geological Survey should establish and maintain the necessary additional stations required for the work of the Forest Service, make the appropriate measurements, and furnish the Forest Service with the completed results, the cost of the work for the Forest Service to be paid to the Geological Survey by a transfer of appropriations, upon the rendition of a statement of account for the cost of the results furnished.

"Both the appropriation for gauging streams and that for the Appalachian Mountains and White Mountains watershed survey are applicable to the work of obtaining stream measurements on waters within the area of those watersheds. The Geological Survey would not establish and maintain the additional stations required for the work of the Forest Service unless reimbursement can be made out of the agricultural appropriation for the survey of the Appalachian Mountains and the White Mountains watersheds, as its funds could be more effectively applied elsewhere for the general public benefit.

"I respectfully request your decision of the question whether such reimbursement can be made by transfer of moneys from the agricultural appropriation for the survey of the Appalachian Mountains and White Mountains watersheds (act March 4, 1907, public, 242, page 29) to either of those for gauging streams (act June 30, 1906, 34 Stat., 728; act March 4, 1907, public, 253, page 47)."

The appropriation for survey and report on the Appalachian and White Mountain watersheds made by the act of March 4, 1907, ch. 2907 (34 Stat., 1281) provides as follows:

"To enable the Secretary of Agriculture to examine, survey, and ascertain the natural conditions of the watersheds at and near the sources of the various rivers having their sources in the Southern Appalachian Mountains and the White Mountains, and to report to Congress the area and natural conditions of said watersheds, the price at which the same can be purchased by the Government, and the advisability of the Government purchasing and setting apart the same as national forest reserves for the purpose of conserving and regulating the water supply and flow of said streams in the interest of agriculture, water power, and navigation, twenty-five thousand dollars, to be immediately available."

The acts of June 30, 1896, and March 4, 1907, Ch. 2918 (34 Stat., 728 and 1335-1336), contain the following appropriations for the Geological Survey of the Interior Department:

"For gauging the streams and determining the water supply of the United States, and for the investigation of underground currents and artesian wells, and the preparation of reports upon the best methods of utilizing the water resources. * * *

"For continuation of the survey of the public lands that have been or may hereafter be designated as forest reserves. * * *

1. The object of the appropriation for survey and report on the watersheds of the Appalachian and White Mountains is to furnish Congress with information for determining upon the advisability of purchasing said watersheds as national forest reserves.

2. The object of the appropriation for gauging the streams and determining the water supply of the United States, etc., is to procure information concerning the utilization by the public of the water resources of the United States, for publication in the report of the Geological Survey on Progress of Stream Measurements.

3. It is understood that the object of the appropriation for the survey of the public lands that have been or may hereafter be designated as forest reserves is the making of original topographical maps of forest reserves.

The particular object of each of these appropriations is therefore distinct from that of the other two appropriations, respectively.

The performance of work by one bureau for another in the same department or by one department for another, and the transfer of supplies and other articles from one to another, and the reimbursement of the appropriation from which payment therefor was originally made by a transfer of moneys from the appropriation applicable to the procurement of the work or the purchase of the supplies or articles under the control of the bureau or department benefiting by or receiving the same, has been recognized by long practice and is often economical and advantageous. I see no legal objection to this practice. (10 Comp. Dec., 297.)

I am therefore of opinion that reimbursement from the appropriation for survey and report on the Appalachian and White Mountain watersheds to either of the appropriations for gauging the streams and determining the water supply of the United States, etc., referred to, for work done or expenses incurred by the Geological

Survey in measuring streams in the watersheds of the Appalachian and White mountains, in the respective fiscal years for which the latter appropriations are made, for use in the report to be made to Congress by the Secretary of Agriculture under the former appropriation, is authorized.

Respectfully,

R. J. TRACEWELL, *Comptroller*.

Mr. VERTREES. Was not one of them later submitted to Attorney-General Bonaparte?

Mr. SMITH. I know that the matter was submitted to Attorney-General Bonaparte, and to him the question was restated and, being restated, a favorable opinion was expressed.

Mr. VERTREES. Have you his opinion?

Mr. SMITH. Yes; I have a copy.

Mr. VERTREES. I would like to put that in, too, Mr. Chairman.

The CHAIRMAN. It is admitted. Hand it to the reporter.

(The opinion is as follows:)

TREASURY DEPARTMENT,
OFFICE OF COMPTROLLER OF THE TREASURY,
Washington, June 13, 1907.

The honorable the SECRETARY OF THE TREASURY.

SIR: I am in receipt of your verbal reference of an opinion rendered by the Attorney-General under date of June 10, 1907, wherein he reviews a decision rendered by me on the 2nd day of May, 1907, and *reconsidered and affirmed on the 27th day of May, 1907*, to the Secretary of Agriculture and in response to a question propounded to me by said Secretary. Said question being fully quoted by the Attorney-General on pages 1 and 2 of his opinion, a copy of said opinion is made by reference a part hereof.

I made the decision in question on the question submitted by the Secretary of Agriculture, and was not at liberty to add to nor take away from the question propounded to me by him.

The Attorney-General in his opinion, *supra*, concurs in the conclusions reached by me in my said decision upon the question I was called upon to consider therein, and then eliminates the part of the question underscored in his opinion, and states the question considered by him as follows:

"May the Secretary of Agriculture, out of the appropriation 'General expenses, Forest Service, * * * to protect, administer, improve, and extend the national forest reserves' (act of June 30, 1906, 34 Stat., 683), or the appropriation raised by section five of the act of February 1, 1906 (33 Stat., 628), for the 'protection, administration, improvement, and extension of the federal forest reserves,' pay the expenses of geologists employed by the Geological Survey of the Department of the Interior, to examine mining claims in forest reserves?"

The question so stated materially differentiates it from the question I considered. I find no difficulty in agreeing with the conclusions reached by the Attorney-General, and if such question had been propounded to me I should have answered "Yes," with the necessary qualification that such payment was to be a reimbursement to the proper appropriation of the Interior Department used originally to pay the necessary expenses of such geologists incurred in the ascertainment of the geological or natural conditions of the soil in the reserves so examined by them at the request of the Secretary of Agriculture. Such examinations would have to be made by the Interior Department for the Agricultural Department. The Secretary of the Interior is not authorized by law to detail his force, or any part of it, to perform services for the Agricultural Department, but is authorized, on request, to perform a given service for the Agricultural Department and to have the appropriation used in performing said service reimbursed from the appropriation in the Agricultural Department receiving the benefit of such service.

I furthermore agree with the views expressed in the opinion of the Attorney-General, that if such geologists should in the prosecution of their duties in ascertaining the geological and natural conditions of the soil in forest reserves, said investigation being made upon the request of the Secretary of Agriculture, ascertain as an incident to said inquiry (and no reason is seen why they would not necessarily obtain such information) that mining or other fraudulent claims are asserted to such lands so examined, such discovery is no objection to the use of the Agricultural appropriation to reimburse the Interior Department for making such investigations; and the facts relative to title so discovered by the Agricultural Department can and should be put to any proper use that they would have been put to if discovered by the Department of the Interior in its own independent investigations made with a view relative to the question of title.

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In order to prevent any misunderstanding of the effect of my decision as applied to the facts discussed by the Attorney-General, I will send copies hereof to the Secretaries of Agriculture and the Interior and to the auditors of the Interior and State Departments.

Respectfully,

R. J. TRACEWELL, *Comptroller*.

DEPARTMENT OF JUSTICE.

Washington, June 10, 1907.

The President, *The White House*.

SIR: In accordance with your instructions, I have examined the two decisions of the Comptroller of the Treasury bearing date May 2nd and May 27th, 1907, respectively, and the several communications from the Departments of the Interior and of Agriculture accompanying the same, and submit my opinion respecting the question of law therein discussed. This question is thus stated in the memorandum of the law officer of the Forest Service to the comptroller requesting a reconsideration of the former of these decisions:

"May the Secretary of Agriculture, out of the appropriation 'General expenses, Forest Service, * * * to protect, administer, improve, and extend the national forest reserves,' (act of June 30, 1906, 34 Stat., 683), or the appropriation raised by section five of the act of February 1, 1905 (33 Stat., 628), for the 'protection, administration, improvement, and extension of the federal forest reserves' pay the expenses of geologists employed by the Geological Survey of the Department of the Interior, to examine mining claims in forest reserves *with a view to securing the cancellation of such claims, such geologists to be wholly under the control of, and paid by, the Department of the Interior?*"

The italics in this citation are my own.

There can be, I think, no doubt that under ordinary circumstances a specific appropriation for a purpose particularly designated is so far exclusive that it prohibits the expenditure for that particular purpose of money covered by a general appropriation which might be otherwise available for the said purpose. This view accords with the spirit and intent of U. S. R. S., sec. 3678, cited by the comptroller in his second decision, and which is in the words following:

"All sums appropriated for the various branches of expenditure in the public service shall be applied solely to the objects for which they are respectively made, and for no others."

In this case the Secretary of the Interior has a specific appropriation of \$250,000—"to meet the expenses of protecting timber on the public lands and for the more efficient execution of the law and rules relating to the cutting thereof; of protecting public lands from illegal and fraudulent entry or appropriation; and of adjusting claims for swamp lands and indemnity for swamp lands."

Moreover, the "transfer act" approved February 1, 1905 (33 Stat., 628., sec. 1, provides that:

"The Secretary of the Department of Agriculture shall, from and after the passage of this act, execute or cause to be executed all laws affecting public lands heretofore or hereafter reserved under the provisions of section twenty-four of the act entitled 'An act to repeal the timber-culture laws, and for other purposes,' approved March third, eighteen hundred and ninety-one, and acts supplemental to and amendatory thereof, after such lands have been so reserved, *excepting such laws as affect the surveying, prospecting, locating, appropriating, entering, relinquishing, reconveying, certifying, or patenting of any of such lands.*"

The passage which I have italicized in this citation indicates very clearly an intention on the part of the Congress that the Department of the Interior and not the Department of Agriculture should administer the laws relating to the cancellation of fraudulent or irregular claims to public lands within the forest reserves and, taken in connection with the other provisions of law above cited, it shows, in my opinion, *as the question is stated* in the "memorandum" first quoted, that the said question must be answered, as the comptroller has answered it, in the negative.

I think, however, that this answer is required or even justified only by so much of the said question as I have put in italics. Were these words omitted and the question put as follows: "May the Secretary of Agriculture, out of the appropriation 'General expenses, Forest Service, * * * to protect, administer, improve, and extend the national forest reserves' (act of June 30, 1906, 34 Stat., 683); or the appropriation raised by section five of the act of February 1, 1905 (33 Stat., 628), for the 'protection, administration, improvement, and extension of the federal forest reserves' pay the expense of geologists employed by the Geological Survey of the Department of the Interior,

to examine mining claims in forest reserves?" I should have no difficulty in answering it "Yes." Not only has the Secretary of Agriculture very clearly the right to make any investigations necessary or appropriate to the proper discharge of his duties "to protect, administer, improve, and extend the national forest reserves," and, for these purposes, the ascertainment of the geological conditions of the soil in certain parts of these reserves may be obviously relevant, but, as noted by the law officer of the Forest Service in his letter to the comptroller of May 18, 1907, the appropriation acts approved June 30, 1906 (34 Stat., 684), and March 4, 1907 (*ibid.*, 1269), expressly authorize the expenditure of this appropriation "to ascertain the natural conditions of * * * the national forests." Neither the comptroller nor the Attorney-General is in anywise concerned with the use which the Secretary of Agriculture may propose to make of the information thus acquired. The information itself being relevant to the discharge of his duties under the law, it must be presumed that it is acquired for use in connection with the duties aforesaid, in the absence of an official statement that it is acquired for other purposes. The fact that some one may have attempted to locate a mining claim on the part of the forests so investigated can not affect the right of the Secretary of Agriculture to make the investigation, nor is it material that this fact may have suggested to the Secretary the advisability of having the "natural conditions" of the particular tract investigated.

Of course, when any information has been thus obtained by the Department of Agriculture, the President can place it at the disposition of the Department of the Interior (or any other department) to be used for any purpose appropriate to the duties of the last-mentioned department, and, no less obviously, the geologists or other persons employed by the Department of Agriculture to obtain this information may be required to testify, or otherwise cooperate, in any proceedings undertaken by the Department of the Interior to secure the cancellation of fraudulent or irregular claims.

Very respectfully,

(Signed) CHARLES J. BONAPARTE,
Attorney-General.

Mr. SMITH. Then the comptroller, taking up the restated question, decided favorably, and the work was started. The difference between the original question and the restated question, in a word, was this, that the original proposition was to pay for the examination of these mineral claims from the appropriation for the protection, administration, and extension of the forest reserves or national forests. The Attorney-General decided that while that could not be done under that law, it was possible for the Secretary of Agriculture to employ the Geological Survey to examine into the natural conditions of the soil in the national forests, and, after reports were made to him regarding the natural conditions of the soil, he could refund to the appropriation of the Geological Survey the salaries and expenses of the men making such reports; and, as the Attorney-General mentioned, if incidentally anything was learned regarding fraudulent mining claims the Department of Agriculture could have the benefit of that information. We have been engaged in that work since that time.

Mr. VERTREES. The result was that the Geological Survey went ahead with that work?

Mr. SMITH. Yes, sir.

Mr. VERTREES. Did you make any stipulation, though, for the protection of the Survey when you did begin, to the effect that they should not be considered as special agents of the Forest Service; and if you did, state why?

Mr. SMITH. The Geological Survey, having a good reputation, as we thought, among the mining men in the West, hesitated somewhat to go into the examination of individual mineral claims. Our work in the mining regions of the West hitherto had been the examination of districts and reporting on districts as a whole. The statute prohibits our reporting on individual properties, but in this case we thought we would be endangering our good reputation if

we went in in any other capacity than that of an impartial, disinterested, and scientific examiner. This matter was discussed between Mr. Pinchot and myself, and he agreed to the proposition. He said that is just what we want. And that was put in the regulation which I issued on the subject, and it was also given to the press by both the Geological Survey and the Forest Service, and we were agreed that the examination by the men from the Geological Survey should not take the viewpoint of the Forester or the forest supervisor, interested only in trees, but should take the viewpoint of the Geological Survey, interested in the legitimate mineral development of the country.

The CHAIRMAN. Did you put that agreement or formulate any rules in writing?

Mr. SMITH. Yes; we issued such regulations, and one of the particulars that we specified was that notice should be given in advance to a prospector to the effect that such an examination was to be made, and he was invited to be present and assist in such an examination. In other words, I stood against any "gum-shoe" work; and as far as a subordinate officer can issue an ultimatum, I made that statement to Secretary Garfield, that I could not agree to injuring the Survey in the West by doing special-agent work.

Mr. VERTREES. Do you know Mr. Overton W. Price?

Mr. SMITH. Yes, sir.

Mr. VERTREES. Who is he; or, rather, to be more accurate, what position in the government service did he hold during the time you are now referring to?

Mr. SMITH. He was associate forester.

Mr. VERTREES. Does that mean that he was second to the Forester?

Mr. SMITH. Yes, sir. And for a considerable portion of the time he would be Acting Forester.

Mr. VERTREES. Mr. Pinchot being the Forester?

Mr. SMITH. Yes, sir.

Mr. VERTREES. I wish to illustrate to this committee at this time, after you come to this, what might be called a sort of cooperative agreement or understanding that you would work together, just the viewpoints the Forestry Service would take of your duties and your rights under the law and those which you took. To illustrate that I will specially call your attention to what happened with reference to the survey of the boundary of the Luquillo National Forest, in Porto Rico.

Mr. PRICE. That was the survey that was undertaken in 1908, in March. Since 1897, I believe, the Geological Survey has had an appropriation for the surveys of national forests, or the forest reserves, as they were then called, and we had been making boundary surveys in connection with that appropriation. In fact, the appropriation was originally made largely with the idea of establishing the boundaries of the forest. The request came in March, 1908, to have this national forest in Porto Rico surveyed. In 1902 the Geological Survey had planned to make some topographic surveys in Porto Rico, and the Comptroller of the Treasury had ruled that that was not a part of the United States, and we had no right to expend any money there. I then said I would be very glad to make such a survey in Porto Rico under this appropriation provided the money was available—that is, whether it could be legally used for that purpose—and planned to take the matter up with the comptroller. I did not wait for the

comptroller's decision, but selected the men and got together the instruments and made every preparation that could be made prior to getting the final word. I took the matter up personally with Secretary Garfield, and took the letter to him personally, which he signed, asking for the comptroller's decision. That was on March 25, I believe, and I left the letter with the chief geographer of the Survey, with instructions to put this through the comptroller's office by hand, thus expediting the matter, and got a promise from the comptroller that he would take it up immediately and possibly give us an answer the next day. This would enable our men to catch the steamer at New York within a few days.

As I was returning from the Secretary's office, I went into the Forest Service—whether on that or some other errand, I do not remember—and Mr. Price, who was there in charge, asked me if I had started the men for Porto Rico. I told him that I had not; that every arrangement had been made, but we were waiting for authority. He said there was no need of waiting for authority; to go ahead. I said this matter was over in the Secretary's office at present. I said that Secretary Garfield—I now remember that Mr. Woodruff was acting in the matter; whether Secretary Garfield was out of town or not I do not remember. I told Mr. Price that the matter was with Mr. Woodruff, who was Assistant Attorney-General for the Interior Department, and that we would rush the matter right from the comptroller. Mr. Price told me it was not necessary to wait for authority. I told him I thought it was, and the next thing he said was: "You go ahead; don't you wait." I had to tell him that I took orders from the Interior Department rather than from the Forest Service. That ended the interview.

Mr. VERTREES. In plain terms, his insistence was that you should go ahead without orders?

Mr. SMITH. Without authority.

Mr. VERTREES. Without authority, and your position was that you were waiting for authority?

Mr. SMITH. Yes, sir; especially as we had had one adverse decision on Porto Rico.

The CHAIRMAN. I think you are misquoting. Was not Mr. Price's position that he was ample authority for you; wasn't that his attitude, that you needed no other authority than Mr. Price?

Mr. SMITH. I told him I did not take orders from him, at any rate.

Mr. VERTREES. Now, isn't it true that about that time—early in 1908—the Forester—that is, Mr. Pinchot—conceived the idea that he wanted to spend most of the money that was available for printing forest atlases?

Mr. SMITH. We had this appropriation—

Mr. VERTREES. Wait a moment. Answer that question first.

Mr. SMITH. Not for printing the forest atlases, but for compiling and printing them.

Mr. VERTREES. What happened with reference to that?

Mr. SMITH. This appropriation of \$75,000 for surveys in the national forests was interpreted by the survey to mean making surveys in the national forests.

Mr. VERTREES. It said that?

Mr. SMITH. Those are the words for the appropriation for the year ending June 30, 1908. The appropriation for which we were planning was amended so that it read "topographic surveys;" and in correspondence that I had with Mr. Pinchot on the subject of how this money should be expended, I called his attention to the change in the appropriation which had been made under orders from Secretary Garfield, that it was for topographic surveys, which made our position that it was a field appropriation even stronger than before. I did not convince Mr. Pinchot with regard to my position, and he contended that I should make the recommendation to Secretary Garfield that approximately the whole appropriation be expended on compilation of maps for the national forests, such compilation work to be done here in Washington. That would have been a complete change in the procedure.

The CHAIRMAN. That was simply making plats of the forests!

Mr. SMITH. Making maps out of whatever data they could collect. I discussed the point a good deal with Mr. Pinchot. I told him that the Forest Service had no need, or anybody else had no need, for that kind of maps; that they didn't deserve to be called maps. But he said the men in the field needed that kind of a plat to put information on that they were collecting all the time, and I advised him that white paper was better than a compiled map of that quality. We discussed the matter, both by correspondence and in personal interview, and on the 25th of May, 1908, Secretary Garfield arranged for a conference in his room between Mr. Pinchot and myself, in order to decide this disputed question. We had that conference, and before Mr. Garfield was ready to take the matter up, having something else on his desk, Mr. Pinchot and I sat together at one end of the room and discussed the matter further. It was simply a reiteration of our former positions. Finally Mr. Pinchot told me that he thought I ought not to stand on the strict interpretation of the law; that the Geological Survey had not always been so strict in their interpretation of appropriation items, and I asked for particulars. He said: "You know well enough that this very appropriation has been expended for other purposes than making surveys in the national forest," or the forest reserves, as they were then called. I told him I knew that in the past there had been some loose accounting between the different appropriation items of the Geological Survey. That is, we have some such different appropriation items, and the tendency has been gradually toward a stricter accounting between the several items. I told him this matter had already been taken up under my predecessor, Mr. Walcott, and that while I knew if there had been some things in the past that were open to criticism, such matters had not been intentional, and they had been remedied under my predecessor, and I had continued that reform, and I knew he had no criticism that he could offer regarding the expenditure of this appropriation in the year just passed, I having been in office then one year. He admitted that there was no criticism of my one year's administration, but he said it will hurt your bureau if this matter is shown up to the reporters. I told him that I would be very sorry to have Mr. Walcott's administration attacked in the papers, but I couldn't help that, and that I was there to interpret the law as I thought right, and that if he wanted to institute an attack in the press, I could not help it; that I would have to stand on my record. He said it would hurt the bureau in the eyes of the public, or something like that.

Mr. VERTREES. And he did say that he would show you up?

Mr. SMITH. Show us up to the reporters.

Mr. VERTREES. Very good.

Mr. SMITH. It was then that our discussion before Secretary Garfield began; that was rather short, and I saw that I was losing, and I simply asked the privilege of submitting a recommendation for the expenditure of that money as I thought in accord with the law, and Secretary Garfield's reply was, "You owe it to yourself and to your bureau to make the recommendation as you think proper." I made the recommendation on that very day.

Mr. VERTREES. Wait one minute. Have you a copy of that recommendation?

Mr. SMITH. Yes.

Mr. VERTREES. I would like to file that recommendation.

The CHAIRMAN. It is admitted.

(The recommendation and reply are as follows:)

MAY 28, 1908.

The SECRETARY OF THE INTERIOR.

SIR: I have the honor to call your attention to the change in the wording of the appropriation for surveys of forest reserves in the sundry civil bill of this session of Congress. The amendment proposed in your estimate limiting the survey to "topographic surveys" was not made upon my suggestion, although I later agreed to the same in the conference you asked me to have with the Commissioner of the General Land Office.

In view of this limitation, I feel compelled to recommend that plans for the expenditure of the \$75,000 under this item provide for field surveys within the national forests, with only such office drafting and compilation as pertains to these surveys and similar topographic surveys of national forests made under similar appropriations in past years. The selection of areas for these field surveys should be based wholly upon the needs of the Forest Service and in conformity with requests from that service, providing, however, as far as practicable, for the completion of surveys in progress which were inaugurated on requests previously made by the Forest Service.

In making this recommendation I am fully cognizant of the urgent desire of the Forest Service to complete its forest atlas at the earliest possible moment, and the expressed willingness to be content for the present with a compiled map based upon data of all degrees of accuracy and inaccuracy. Compilation work of this character is now in progress both at the survey and at the Forest Service; but the resulting maps are only makeshifts, in so far as these are not based upon actual topographic surveys, and already in many cases such compilations are being made the second time, and it is expected and even contemplated that what is done now must be recompiled and reprinted in the future. This compilation of data from other sources can be equally well prosecuted by the Forest Service as by the Geological Survey, it being office work wholly unconnected with the field work of the survey.

Full and careful consideration of this matter has convinced me that even if the compilation of the type proposed and to the extent demanded were in accord with either the letter or the spirit of the present appropriation item, its continuation would be inadvisable as necessitating an annual expenditure of the whole or a large part of the appropriation in the office preparation of makeshift maps, which would be subject to constant revision, while little or no progress could be made in the actual topographic surveys of the national forests, upon which surveys must be based the maps which will meet the real needs of the Forest Service for its administration of the national forests. However, I base my recommendation not upon this question of economic administration, but upon my understanding of the intent of this appropriation, which is made to the survey because of its field force of trained topographers.

Whatever the plan adopted for the work under this appropriation item, the charge made against the \$75,000 for general office expenses will be on exactly the same basis as in the case of every other appropriation item under the survey, namely, an assessment based upon actual cost of administration, and proportionate to actual returns to the work under this appropriation. No topographer while on the pay roll from this appropriation will be engaged in any work pertaining to any other division of the survey, nor will any clerk or other employee be paid from this appropriation for a period incommensurate with the amount of service actually rendered to this work. This plan has been carried out to the best of my ability during the current year with this as with all other appropriations.

Very respectfully,

G. O. S., Director.

SECRETARY'S OFFICE,
DEPARTMENT OF THE INTERIOR,
Washington, D. C., May 30, 1908.

DEAR SIR: I have your letter of May 28, regarding the appropriation for surveys for forest reserves, in the sundry civil bill, for the year ending June 30, 1909.

After conference with you and Mr. Pinchot, the Chief of the Forest Service, I have reached this conclusion: The purpose of this appropriation is to afford to the Forest Service such topographic maps of the forests as are required for the needs of that service. Therefore the work of the Geological Survey will be carried on in accordance with the requests of the Forest Service, as to area, survey, and compilation, the printing to be paid for by the Forest Service. In making this arrangement with the Forest Service it is distinctly understood that the Geological Survey is in no way responsible for any material other than that which it uses as a result of its own field service, but that in each instance where material is obtained from sources other than its own, either supplied by the Forest Service or obtained from any other governmental agency, the Geological Survey will so advise the Forest Service and will not be responsible for any error in result caused by imperfect material so furnished or obtained. The Geological Survey will charge against any portion of the appropriation used for this purpose its proportionate administrative charge for both field and office work. I appreciate that much of the work thus compiled will be subject to revision later, but, as I have learned from the Forest Service, the immediate need of that service is to obtain the compilation and printing of maps covering the largest possible area of the national forests at the earliest moment, and hence it will be impossible to do this if we are to rely wholly upon our own field service. You are therefore authorized to so use whatever portion of the appropriation may be necessary to meet the requirements of the Forest Service. If the Forest Service desires any field work done this next year they must advise the Geological Survey immediately, to the end that the field force may be in shape to carry on the work. Unless this information is given immediately the field forces will be dismissed or transferred to other work, and there may be an unexpended balance of the total appropriation, which will, of course, be returned to the Treasury, unless it can be otherwise utilized.

I have sent a copy of this letter to Mr. Pinchot, of the Forest Service, requesting him to immediately advise you as to the character and amount of work desired next year.

Very respectfully,

JAMES RUDOLPH GARFIELD,
Secretary

THE DIRECTOR OF THE GEOLOGICAL SURVEY.

Mr. SMITH. My letter was dated May 28, and to that letter Secretary Garfield made reply on May 30, in which he said that—

The purpose of this appropriation is to afford to the Forest Service such topographic maps of the forests as are required for the needs of that service.

And then it goes on and states that I shall do such compilation work as is deemed best by the Forest Service, that "he had sent a copy of this letter to Mr. Pinchot, of the Forest Service, requesting him to immediately advise you as to the character and amount of work desired next year."

Mr. VERTREES. Mr. Garfield overruled your position and ruled with Mr. Pinchot?

Mr. SMITH. He allowed me, however, to file my recommendation, but he overruled me.

Mr. VERTREES. He allowed you to file your statement first, and then he overruled it?

Mr. SMITH. Yes, sir.

Mr. VERTREES. And did what Mr. Pinchot desired in the matter, or rather, took Mr. Pinchot's views?

Mr. SMITH. Yes. But I thought it was a generous act on his part in putting me straight on the record.

Mr. VERTREES. After Mr. Pinchot left, state whether or not you protested to Mr. Garfield against the threat that Mr. Pinchot had used.

Mr. SMITH. Mr. Pinchot had to leave then to meet another engagement, and I waited a few moments and told Mr. Garfield that I wanted to enter a protest against being threatened in his room regarding my administration of what I thought was the work of my bureau.

Mr. VERTREES. You mean threatened with publication in the newspapers?

Mr. SMITH. I think the word he used was the "publicity club." Mr. Garfield said: "Why, Gifford did not say that he would show you up in the press, did he?" I said, "No," but he said he would give the matter to the reporters. Those are substantially the exact words.

Mr. VERTREES. You saw no difference between the two propositions?

Mr. SMITH. I thought the result would be the same.

Senator SUTHERLAND. You thought that if it got to the reporters it would very likely get to the papers?

Mr. SMITH. Very soon afterwards.

Mr. VERTREES. Probably with a good deal more.

Mr. SMITH. Well, usually such a story would not lose in transmission.

The CHAIRMAN. Were you not aware that that was a part of the conservation policy?

No response.

Mr. MADISON. I want you to answer that question. I want you to answer as to whether you thought that was a portion of the conservation policy?

Mr. SMITH. I was told that the Forest Service needed this thing done, and I was given to understand——

Mr. MADISON. No, no.

Mr. SMITH. That was a sufficient reason. Does that answer it?

The CHAIRMAN. You misapprehended my question. I mean, ventilating these things in the newspapers if they did not go just to suit.

Mr. SMITH. Senator, I did not know of that procedure at that time.

The CHAIRMAN. You did not know that that was a part of the conservation policy?

Mr. SMITH. I did not at that time.

The CHAIRMAN. You now understand it is?

Mr. MADISON. Do you now understand that that is a portion of the conservation policy? Answer the question in the spirit it is asked by the chairman.

Mr. SMITH. I do not consider it an essential part, but it seems to be a part of the practice. Is that sufficient?

Mr. MADISON. Certainly. I want to get your view point and your opinion of the matter in the spirit in which it was asked by the chairman.

Mr. VERTREES. I think we will develop that before we get through.

Mr. MADISON. Very well.

Mr. SMITH. I have my views on the subject, and I will be glad to give them as they are called for.

Mr. VERTREES. They seem to want your views now on that question—on the publicity question—and suppose you give it to the committee right now.

Mr. SMITH. Well, to make it altogether personal, which I dislike, but that has to be my view point—as I told a newspaper man that my family had been newspaper people and they thought they were going to make a newspaper man of me, but, as my father said, it was just as well they did not, because a newspaper man needs a good deal of brains. Expressing my attitude toward the newspaper fraternity in that way, having two uncles and a father in the profession. I told this newspaper man that I was getting to be ashamed of the fraternity for the reason that they were deliberately putting in a part of the truth, rather than the whole truth; making deliberate misstatements. And at that time I pointed out the cases—

Mr. MADISON. Give those.

Mr. SMITH. That was the case I was talking about at that time—I can not give the dates—where Secretary Ballinger was asked by Collier's Magazine to give special privileges to a representative of Collier's in looking over the files of the department, and he issued a statement in which, the first sentence, as I remember it was, that "while the public records are open to the public"—the general statement—"he did not feel called upon to personally conduct," or words to that effect, "a representative of Collier's through the files." Well now this statement was given to the press in its entirety, and a local paper garbled that and said: "Secretary Ballinger denies access of representative of Collier's to the public files."

That was simply one case, and I cited it to the representative as a case in point, and I think that was the particular case that I pointed out to him. Of course, it is not possible for me to prepare a case on this point, but I have been convinced in the last year, and I was convinced at Spokane, that it was not the desire of the press representatives to give out the truth, the whole truth.

Mr. DENBY. Are you not straying just a little from the purport of the question? The question was, as I understood it, that you were asked to give your opinion as to the publicity ideas or plans or operations of the Forest Service.

Mr. SMITH. Of the conservation movement.

Mr. DENBY. The conservation movement, rather.

Mr. SMITH. Possibly I have strayed by going into that detail, but I want to be perfectly frank with the committee.

Mr. DENBY. I do not mean to criticise you, Mr. Smith.

Mr. MADISON. I do not think Mr. Smith has strayed, because he has taken the position, and I understand he wants to make plain to the committee that in the matter of dealing with the publicity of conservation matters, the press has generally been unfair, and it has only given out half truths with regard to the service; in those cases.

Mr. SMITH. Partial truths. I do not want to go into percentages; but partial truths.

Mr. MADISON. I was not dealing with percentages. Now, then, I think that it is important and material, if it is a matter of fact that the press has been giving out partial statements, colored statements, and things of that kind on these questions of conservation. If you know of any other instance of that kind—

Mr. SMITH. I want also—

Mr. VERTREES. Give right there to the judge, as he seems to think that newspapers are impartial—give that water-power publication at Spokane—what happened about that 15,000 acres withdrawal.

Mr. MADISON. Well, I must object to the gentle slap on the wrist that Mr. Vertrees gave me. I have not attempted to assume any attitude about the matter at all. I have been asking for the facts. I have not assumed that the press is either partial or impartial. I think that it is perfectly improper for me to do that.

Mr. SMITH. I am giving simply my personal impression in answer to that question.

Mr. MADISON. I think it is important to know these things. There has been a great deal of talk about conservation, and the newspapers and magazines have talked about the question, and if they have not dealt fairly with those who have taken certain attitudes, let us know it.

Mr. SMITH. I would like just to make one qualification.

Mr. VERTREES. I will get to that. Go ahead, and then we will resume.

Mr. SMITH. I want the chairman and the other members of the committee to understand that I believe in publicity in connection with conservation. Conservation is at bottom educational, but the extravagant statements that have been given out to the press—I want to make the distinction that the press does not originate these things—all hurt the conservation cause, rather than otherwise, because the exaggerated statements come home to roost, and I think that those enlarged statements that have been given out in the past have hurt the conservation cause, because they have come back, and whatever reaction there is on the part of the public I think is largely due to the amount of exaggeration. You have discussed it with regard to Alaska.

Mr. JAMES. Do you think that these exaggerations that appear in the newspapers were caused by the natural inclination of reporters, or by the department that gives them out?

Mr. SMITH. I would not say that. I think there have been some exaggerated statements given to the newspapers. I would like to have it understood that I am not referring so much to newspapers, as a rule, as I am to magazines and weeklies.

Mr. JAMES. To be more specific, you are referring to Collier's Weekly?

Mr. SMITH. Mr. James, I used to subscribe for Collier's for facts, and now I read it as fiction.

Mr. JAMES. Now, while you have noticed a great many exaggerations in Collier's and other papers on the conservation idea, have you ever noticed any exaggerations upon the other side?

Mr. SMITH. Yes, sir.

Mr. JAMES. So they about even up, do they?

Mr. SMITH. But I do not think, Mr. James, that I have any right to use the devil's weapons in fighting him.

Mr. JAMES. I am not making an argument with you, but I merely wanted to find out whether all of these exaggerations are on one side.

Mr. SMITH. Not at all.

Mr. JAMES. It might be that those people who advocate conservation might take the view of it that in order to fight the devil they had to do it with his fire.

Mr. SMITH. Yes, sir.

Mr. JAMES. But that is not your position nor mine.

Mr. SMITH. No, sir. I do not think that is an essential part of the conservation policy.

Mr. JAMES. Neither do I; but you have noticed exaggerations on the other side?

Mr. SMITH. Yes, sir.

Mr. JAMES. And you, of course, would not charge that to the enemies of conservation?

Mr. SMITH. Yes, sir.

Mr. JAMES. You would say that because some magazine or newspaper that pretended to be the enemy of conservation, and publishing false statements, that they had been given out by the people who were opposed to the policy advocated by Mr. Pinchot and Mr. Garfield?

Mr. SMITH. I should say that that was so.

Mr. DENBY. What kind of exaggerations, Mr. Smith, do you mean on the other side?

Mr. SMITH. Which is the other side?

Mr. DENBY. The other side that Mr. James referred to. You have referred to exaggerations in the alleged interests of conservation. Mr. James says they are exaggerations against the conservation movement. I merely asked you to recall any instance that you have in mind. You have given one on the one side; do you know of anything on the other as to exaggerations against the movement?

Mr. SMITH. Take the statement with regard to the coal supply that has been before the committee.

The CHAIRMAN. Take Hampton's Magazine, the late issue. Have you got that?

Mr. SMITH. I have not read that carefully.

The CHAIRMAN. You ought to read that.

Mr. GRAHAM. Mr. Smith, the statement is made in the papers that—

Mr. SMITH. May I try to answer Mr. Denby?

Mr. VERTREES. I would like to get back to the witness.

Mr. GRAHAM. I beg your pardon.

Mr. SMITH. Simply with regard to the coal supply we have had extremists. Some say that there is enough coal for seven thousand years, and that is quoted—that estimate—by Secretary Ballinger.

Mr. DENBY. As tending to illustrate the idea that there was no need for the conservation of coal, you mean?

Mr. SMITH. Yes, sir; and there are others who have figured, and with good reason—both of them are statistical estimates—that it would last one hundred and twenty or one hundred and forty or one hundred and fifty years. Those are the two extremes.

Mr. MADISON. You think that argument on the part of Secretary Ballinger is an exaggeration?

Mr. SMITH. No, sir; he quoted some estimate.

Mr. MADISON. I wanted to understand you clearly. You do mean to say, then, that Secretary Ballinger, when he quotes that statement that the coal supply would last for seven thousand years, was exaggerating, and it was one of those exaggerations which you were referring to here of being on one side of the controversy?

Mr. SMITH. It was the very statement that I would make when anybody made the one hundred and thirty year estimate, because those are the two extremes. One extreme says one hundred and

thirty years and the other extreme says seven thousand years, and if one extreme is quoted to me I will quote the other.

Mr. JAMES. I thought your policy was not to quote one extreme against the other?

Mr. SMITH. I would not, except in answer to the one argument.

Mr. GRAHAM. That would be fighting the devil with fire, would it not?

Mr. SMITH. What is it?

Mr. GRAHAM. Would that not be a departure from your established principle of not fighting the devil with fire?

Mr. SMITH. Except that I would not want to use the term "devil" for the person who took the other point of view. Now that the matter is up, I would like to read, not my statement, but one that I have indorsed.

With so many indeterminate factors whose importance is realized, but can not be measured, prophecy must possess a questionable value.

I subscribe to that. That is quoted from one of the Conservation Commission reports.

Mr. MADISON. In the absence of inspired prophets at this time I will say that that is correct.

Mr. SMITH. I would not have approved having it go into our report unless I thought it was correct.

The CHAIRMAN. Mr. Vertrees, please proceed.

Mr. VERTREES. Was there any further threat of any kind by anybody connected with the Forest Service—by Mr. Plummer or Acting Forester Potter, or anybody, about the matter of those maps?

Mr. SMITH. This last January—I think January the 15th—a memorandum from Mr. Plummer, of the Forest Service, addressed to the Acting Forester, Mr. Potter, was submitted to me, in which the Forest Service asked for more of this compilation work, and I made the statement to the chief geographer of the service that we had done all the compilation work that was asked for, that was agreed upon under the arrangement ordered by Secretary Garfield, and that we were continuing under another appropriation, and that was to be administered in accordance with the recommendation which I had subsequently made to the Secretary of the Interior for the succeeding year. This was asking for a compilation work on six national forests in which we had done no work, no field work; and I said that could not be done. This matter was taken up by Mr. Plummer with the chief geographer of the survey, and I was told that he objected to my ruling and said that there was a congressional investigation of these matters that was going on and that the Geological Survey would be shown up. That was on Saturday, I believe, and on the following Monday I went over to see Acting Forester Potter and told him of Mr. Plummer's visit and told him I did not want calls of that kind; that I would not be blackmailed in this matter of doing what the survey thought it ought to do by the threat to show us up before the investigating committee. I also told Mr. Potter that a bigger man than Plummer had tried that same thing on this same appropriation, and I would not stand for it.

Mr. VERTREES. Who was the bigger man whom you referred to?

Mr. SMITH. I was referring back—

Mr. VERTREES. To the conversation you have related with Mr. Pinchot?

Mr. SMITH. Yes, sir; back in the preceding year.

Mr. VERTREES. You have talked about the reporters—growing out of the reporters.

Mr. SMITH. Yes, sir; Mr. Potter regretted the circumstances, and nothing more was done.

Mr. VERTREES. Did you have any conversation with Mr. Price as to the attitude of the bureau, and what they would do—what they were going to do with Mr. Ballinger?

Mr. SMITH. I had two conversations with Mr. Price. At one time there was some other little point of friction, and he told us if we did not do the work as they wanted it done, they would take this appropriation away from us. I suggested in a kindly spirit that that matter possibly was in the hands of Congress.

Mr. VERTREES. And not in their hands?

Mr. SMITH. Not in the hands of the Forest Service. Then I had another interview with Mr. Price last summer, in September. It was just after my return from the West, and I had noticed some things regarding trails in one of the national forests, and I went West to see Captain Adams, the chief of the operation branch, and told him about this condition of the trails, and later gave him a memorandum on the subject. Having transacted this piece of business, I said I would see Mr. Price, with whom I was on very friendly terms, and he greeted me warmly and said he was very glad to see me and that the Forest Service had no feeling against the Geological Survey or against any of us; that we were doing the right thing, and I told him I thought we were, and then he went on to say, "We know how you are placed at Spokane." I had just returned from Spokane—he said, "You could not help doing what you did." I said, "I simply stated the facts in the matter, and that is what we intend to deal with on any and all occasions." "Well," he said, "that was all right; as far as we know there is no criticism of you, or any member of the survey." I told him I hoped there would not be, and then he went on to say, "Smith, we like you well enough, but we do not like your chief." I said, "Mr. Price, it is not necessary for me to come in here to discuss a subject on which we do not agree." "Oh," he said, "that is all right; we do not want to discuss that. You are all right, but we do not like the coat you wear." I told him then that there was no need of discussing that; if I did not like the coat I wore I would take it off. Then he used what seemed to me rather significant words, "Of course, you are in an embarrassing position now, but it won't last long. If we do not get him one way we will get him another."

The CHAIRMAN. Who was that?

Mr. SMITH. Mr. Ballinger.

Senator ROOT. When was this conversation?

Mr. SMITH. On September 18.

Senator ROOT. Of what year?

Mr. SMITH. 1909.

Senator SUTHERLAND. This was a statement of Mr. Price, was it?

Mr. SMITH. To me; yes, sir.

Senator SUTHERLAND. Having reference to Mr. Ballinger?

Mr. SMITH. Yes, sir; to Mr. Ballinger.

Mr. VERTREES. What is Mr. Price's connection with the Forest Service, and what duties did he perform?

Mr. SMITH. He was Acting Forester at that time. He was assistant to Mr. Pinchot, and in Mr. Pinchot's absence he acted for him.

Mr. VERTREES. Did he or not conduct their publicity bureau?

Mr. SMITH. I could not state with regard to that.

Mr. VERTREES. He was the man who was dismissed by the President later?

Mr. SMITH. Yes, sir.

Mr. VERTREES. What were your relations with Mr. Garfield while he was Secretary of the Interior, and subsequently?

Mr. SMITH. Very pleasant, indeed; altogether, very satisfactory. Of course, there was one case in which he overruled me, and there were minor matters in which he did not accept my recommendations, but in one important case which I have mentioned I felt that he treated me very fairly and very generously.

Mr. VERTREES. You could not expect him to always agree with you. He was your chief, and that was his right.

Mr. SMITH. Yes, sir.

Mr. VERTREES. Was there any friction or unkindness in any way?

Mr. SMITH. No, sir.

Mr. VERTREES. You were made director during his administration, were you not?

Mr. SMITH. Yes, sir.

Mr. VERTREES. Was a large part attributed to him in any way?

Mr. SMITH. I thanked him for the appointment. Of course the appointment was made by the President.

Mr. VERTREES. Now, what passed between you and Mr. Garfield upon his departure from office as to keeping him advised and posted as to the situation, and what was done—I mean not privately, but in the matter of your official duties?

Mr. SMITH. Officially, our intercourse was altogether pleasant. I think he called on me soon after he left the government service and asked me to send him any publications. What he specified at that time were on water questions—not referring to water power, but to the subject of city supplies of water, and I took occasion to send him such a report in May.

Mr. VERTREES. 1909?

Mr. SMITH. 1909; and I received a letter thanking me for it with the request that I would write him about the work of the survey, particularly what had been done in relation to the coal lands. That was on May 14.

Mr. VERTREES. The thing that you sent him was what is known as the Press Bulletin, was it?

Mr. SMITH. Not previously to that; I had sent him one of the Water-Supply Papers. I think it was on the relation of sewage to water supplies, and some other publications which he acknowledged, and he then made this request of the 14th that I wrote him about, the work of the survey, and then also suggested that I could stop over and see him on my way West—he knowing that I usually went West in the summer—and I replied to that immediately on receipt, in a letter of May 15, which was not an official letter, but a personal letter.

Mr. VERTREES. I believe I would like to have you read that letter and put it in evidence, if the committee please.

Mr. SMITH. It is as follows:

[Personal files.]

MAY 15, 1909.

MY DEAR MR. GARFIELD: In reply to your letter of the 14th instant, I am sending you a newspaper story which I have just prepared and am sending out. I think this outlines practically the whole story and that it will show to the public what is actually the present status of the coal-land policy. I feel that there has been some unjust criticism in certain newspapers of the present administration, at least as regards this matter of the coal lands. The fact is that Secretary Ballinger from the very start has shown every evidence of pushing still further along the lines marked out by you. As soon as I proposed the revision of the valuation scheme he took the matter up and gave it his personal attention. You may remember that we intended to discuss this subject of increasing the valuation earlier in the year, but I found no opportunity to get the matter in shape to present to you before Congress adjourned. I considered such an increase in price as the next logical step and am confident that the revision would have been approved prior to March 4 had I been able to bring the matter before you.

The rule providing for the consideration of "special conditions enhancing the value of the land for coal-mining purposes" was written at the suggestion of Secretary Ballinger.

May I introduce an explanation there?

The CHAIRMAN. Yes.

Mr. SMITH. In the fall of 1907 the Forest Service, I believe, asked the department to consider adding the value of timber on the land to the value of coal, this to be in the national forest, putting an increased value on the coal land. The matter was discussed with Secretary Garfield, and the opinion seemed to be reached that there was no provision in the law for increasing the value of the coal land by adding the timber value. I took the matter up with Secretary Ballinger in connection with others, and at his suggestion this rule was added, which was in effect that the coal not adding the timber value, but the presence of the timber on the claims increased the value of the coal inasmuch as the cost of the operation of that mine would be that much less, not that the coal is to be sold off for lumber, but that it is to be used in mining operations itself. That suggestion was Secretary Ballinger's own suggestion, and I mention it as showing his spirit when I was writing this letter to Secretary Garfield. The letter continues:

And he also added the provision that the maximum of \$300 per acre does not hold in districts containing large coal mines, etc. I mention these as evidence of the continuation of your coal-land policy in spirit, as well as in letter.

In the matter of the North Dakota lignite lands, I am not quite so well satisfied with the present conditions. At the request of the Secretary, I indicated the townships along the Missouri and the Little Missouri, where the geologists of the survey consider present coal values as greater than the agricultural worth of the land. Some of these townships were in the original withdrawals and some not. In my letter, however, I made the statement that all of the western part of the State is regarded by the geologists as containing workable coal, thus both defending the former withdrawal and keeping the way open for any future recommendations by the survey that it may seem advisable at any time to make. The action on the part of the Land Office which should logically follow the survey's statement of relative worth would be to give the agricultural entryman title in all of the areas, except the 54 townships enumerated by the survey. I have not looked into the matter, but I fear that the North Dakota lands have been thrown wide open. Yet I am less concerned about the conservation of these lignite lands than I am about the proper treatment of the much more valuable coal lands farther west. And here I feel that we are making progress between the land-office people and ourselves in the matter of cooperation. I might mention the fact that there seemed to be some disinclination on the part of the Land Office to follow the terms of division of work outlined in your letter of March 3, addressed to Mr. Dennett and myself. Indeed, I was told that the provision for

special withdrawals to be made of the land which had been actually examined by the survey, pending transmission of classification and valuation plats, would not be put in force; but soon after I was called upon by Mr. Mondell and other Congressmen to explain the purpose of these special exceptions, and thus I learned that your instructions were actually being followed. In this connection, I am reminded that when Mr. Finney, who had been representing the Land Office in some of its negotiations with me, was transferred to the office of the Assistant Attorney-General, a slight change in his attitude became apparent. On a recent occasion, referring to a letter I was just about to present to the Secretary, Mr. Finney suggested a change in the wording so as to "fix it so that the land-office people will have to write the instructions the way you want them to."

The cooperation on the part of the Land Office in contributing to the coal classification work of the survey continues on the same terms as last year. Mr. Ballinger himself is handling the general subject of land classification as was shown to me when I asked Mr. Dennett to join me in the recommendation for the allotment from the land-office funds and his answer was that the Secretary was handling that himself, although he of course would not oppose my recommendation.

We are perfecting the organization of the coal land classification work and the land classification board, of which you will remember Mr. Veatch is chairman, is turning out reports of the highest grade. In April the board classified over 200,000 acres in Montana, half of which were coal lands, valued at \$20 to \$75 per acre, the total valuation being \$3,617,060, while at the minimum price this land would have sold at \$2,059,580. This is not very high-grade coal land, but the figures show the importance of doing this classification work and doing it right.

It will be a pleasure for me, from time to time, to keep you informed of progress here in the public-land work of the survey and of the department as I know it. I will on some later occasion write you concerning what we are doing on the water-power sites and have done on the nonirrigable land on account of the 320-acre homestead law. It has been reported that the phosphate lands you withdrew were thrown open by your successor. There was no excuse for this mistaken idea becoming at all current, for the only action in the matter was the restoration of 183,040 acres of nonphosphate lands, this action being based on my recommendation after the withdrawals had been carefully reviewed and nonphosphate lands taken out wherever possible. Withdrawals had been made in terms of townships and it was possible to restore sections and groups of sections in many townships, as was also done, as you will remember, in December, under your own instructions. The total restorations in December and April aggregated less than 5 per cent of the original withdrawals, and no land believed to contain phosphate has been restored.

It will be a great pleasure to me to stop off some time when I am on my way to or from the West and call upon you. A few hours' discussion of these matters in which we are interested will be more satisfying than such fragmentary statements as the above.

Yours, very cordially,

G. O. C.

Mr. PEPPER. Mr. Vertrees, may I ask whether it is at all necessary to the understanding of that letter that the letter to which it is an answer should go in? I have not seen it.

Mr. VERTREES. I have not seen it, either. Please read the letter that that is an answer to.

Mr. SMITH. The letter to which this was an answer is as follows:

JAMES R. GARFIELD, ATTORNEY AT LAW,
931 GARFIELD BUILDING,
Cleveland, May 14, 1909.

MY DEAR Mr. SMITH: Many thanks for the Water-Supply Paper and other publications. I wish you would write me about the work of the survey, particularly what has been done in relation to the coal lands.

Possibly you can stop over and see me on your way west.

Very truly, yours,

JAMES R. GARFIELD.

HON. GEO. OTIS SMITH,
Department of the Interior,
U. S. Geological Survey, Washington, D. C.

Mr. VERTREES. I think we had better put both in the record.

The CHAIRMAN. They are admitted.

Senator ROOT. What is the date?

Mr. SMITH. Secretary Garfield's letter was written May 14, 1909. My answer was May 15, 1909. There was a press bulletin referred to there which set forth the condition of things, and the committee has done me the honor of putting in the other press bulletin that I had prepared on this conservation subject.

The CHAIRMAN. That is admitted.

Mr. SMITH. The reply of Ex-Secretary Garfield to this under date of May 17, 1909, is as follows:

JAMES R. GARFIELD, ATTORNEY-AT-LAW,
931 GARFIELD BUILDING,
Cleveland, May 17, 1909.

MY DEAR MR. SMITH: I am very pleased with your report about the coal and phosphate lands. Certainly a rather erroneous impression of recent departmental action has been published.

Sincerely yours,

JAMES R. GARFIELD.

Hon. GEO. OTIS SMITH,
Department of the Interior, U. S. Geological Survey,
Washington, D. C.

Mr. VERTREES. What is the date of that?

Mr. SMITH. That was the 17th of May, 1909.

Mr. VERTREES. These letters, as I understand, explain the feeling and attitude of Mr. Garfield and yourself at that time toward each other, toward the service, and toward the department, as you understood it?

Mr. SMITH. Yes, sir. There is one other letter which is already in the records on the subject of water-power withdrawals.

The CHAIRMAN. Your letter?

Mr. SMITH. My letter; yes, sir.

Mr. VERTREES. Will you look at page 2046 and see if that is it?

Mr. SMITH. My letter of June 2 appears on page 2046 of the record. and Mr. Garfield's reply of June 4 on the following page.

Mr. VERTREES. You think they should also be considered in connection with the letters you have just offered?

Mr. SMITH. This was in answer to his general request for information.

The CHAIRMAN. It is now half past 12 o'clock, and the committee will take a recess until 2 o'clock.

(Accordingly at 12 o'clock and 30 minutes p. m. the committee took a recess until 2 o'clock p. m.)

AFTER RECESS.

The committee reassembled after recess at 2 p. m.

The CHAIRMAN. The committee will please come to order. The counsel will proceed with the examination.

TESTIMONY OF MR. GEORGE OTIS SMITH—Resumed.

Mr. VERTREES. I believe when we adjourned we were on the question of your correspondence with Mr. Garfield?

Mr. SMITH. Yes, sir.

Mr. VERTREES. And the date of that letter which you wrote was what?

Mr. SMITH. The date of the letter I wrote was May 15; there was a subsequent letter, which is already in the hearing.

Mr. VERTREES. Where is that letter?

Mr. SMITH. That is the one that I gave the page.

Mr. VERTREES. At page 2046?

Mr. SMITH. Yes; at page 2046 of the record.

Mr. VERTREES. Now, then, did you have any interview of significance at that time, or shortly thereafter, with Mr. Pinchot, the Forester, and if you say that you did, state when it was, and where it was, and what it was.

Mr. SMITH. I had an interview on July 23, 1909. I have the date from the fact that I wrote the letter to Mr. Garfield immediately after that interview.

Mr. VERTREES. I wish you would read to the committee the letter that you wrote to Mr. Garfield immediately after that interview.

Mr. SMITH (reading):

[Copy.]

JULY 23, 1909.

MY DEAR MR. GARFIELD: Just as I was leaving Washington this p. m. I chanced to call on Mr. Pinchot, and he said things that I can not yet explain. He charges me with being loyal to the new Secretary of the Interior at the sacrifice of my loyalty to the former; that people generally are looking upon me as forgetting my obligations to you and acting the turncoat and renegade, and that I'm a marked man.

These are words that I don't like to repeat. I can't make any defense to these unnamed critics, and I suppose I must take this as my share of the war tax. The fight is on, as I realize fully after hearing Mr. Pinchot talk frankly and freely to me; but I wish to add that I have heard no declaration of war on the Forest Service from Secretary Ballinger and absolutely no denouncing of Mr. Pinchot. I know that he has reversed several of your decisions, but not once have I heard any criticism of you in any personal way. My knowledge of these matters regarding the Reclamation Service is only incidental and accidental, as you will understand. Once, for instance, Secretary Ballinger had been discussing matters with Arthur Davis, and when my turn came he mentioned the question under discussion—that cooperative scrip matter—and his remark was: "I don't regard Mr. Garfield's motive (or intention) in taking his view of this any different from mine in taking my view."

While I regret to observe that the fight has come to its present crisis, it is not my fight, and I feel sure that your advice would be for the Geological Survey to keep out of it. I want, however, to let you know that I know of these charges against my loyalty, which came as a thunderbolt 6 hours ago.

One charge I was able to answer to Mr. Pinchot's satisfaction, though I'm afraid my answer in this particular, which was the first point mentioned, will affect his general verdict. Nothing has been given to the press by the Geological Survey on the subject of the public lands that I've not sent you with a letter on the subject, and as I emphatically stated to Mr. Pinchot to-day, nothing will be given out that I can not so communicate to you. I hesitate to put this down in this blunt fashion, for I would prefer to believe that my two year's service under you gave you a basis for a larger faith in me than Mr. Pinchot has. Mr. Pinchot reads into my water-power statement, which I wrote myself and for the most part while on a railroad trip, ideas which I didn't write into it. I read an outline of it to Secretary Ballinger, but he did not see the final draft. It was distinctly understood that both that statement and the one on coal-land valuation were to be Geological Survey statements, though I suspect some people in the department didn't approve of this. My special desire by reason of the paper attacks on the Reclamation Service was to avoid any reference to their connection except to indicate that they are cooperating in the present work with the data in their possession.

I think you will understand my attitude in stating, as I said to Mr. Pinchot that I intend to be loyal to my chief or else sever the relation. I am not thin-skinned or else I would be in bad shape after the talk I listened to to-day; but I couldn't work with you or any other chief unless I felt that I had the confidence of my chief. And as I look at it, the fundamental charge against me is that I have the confidence of Mr. Ballinger. My special gratification is that since March 4th I have been given a free hand to develop the survey work along the lines that you approved without

change in direction, and while I have been conscious of the friction elsewhere it has pleased me to have Mr. Ballinger endorse those of your policies in which the Geological Survey is concerned, and if anyone notes the personal touch in either of the statements given out by the survey that was actuated wholly by my desire to have that endorsement strengthened by publicity.

Furthermore, I wish to state that I can recall nothing that suggested to me anything but the full purpose of Secretary Ballinger to push the policy of protecting the coal, oil, phosphate, and other public lands with which the survey is concerned. Since I have been called into conference on the subject, Secretary Ballinger has surely left no "40" unturned to protect power sites. In fact, Mr. Dennett and Morris Bien do not endorse his action in holding up patents on entered lands without withdrawal.

I am speaking from personal knowledge, and say it because I believe it, though Mr. Pinchot laughs at my simple-mindedness. It is because I have been given authority to continue what I consider your policies for the survey that I have taken pleasure in reporting progress to you and in anticipating doing so in the future. I have taken this view of my obligation to you, that I will justify your choice by continuing and developing the public-land work in which you started me, even after our official relation ceased. No demand has been made upon me even by indirection that involves any conscious turning away from that relationship that was so satisfactory to me and, as I told you, increased my faith in man.

My interview with Mr. Pinchot terminated, I believe, with a slight increase in his faith in me, though he advises me to do differently from now on, which I can not do until I see the error of my route just passed over. Yet my talk with Mr. Pinchot was so unsatisfactory that I felt the impulse to state the case to you. I regret that Mr. Pinchot feels as he does, and I might wish to have the good opinion of those unknown people who denounce me, but I am most concerned that you should have the facts before you as I know them.

I am on my way to Denver and then to the coast. Next week I join Marshall's party in the High Sierra (address Yosemite) and hope to do some real geologic work before I go to Spokane, August 9. I have prepared something on land classification, which I think you will endorse. It had its beginnings in certain of those memoranda we formed the habit of submitting to you.

Our conservation report is out, and I will have one sent to you.

Yours, sincerely,

GEO. OTIS SMITH.

Mr. VERTREES. We would like that to go in, Mr. Chairman.

The CHAIRMAN. It is admitted.

Mr. VERTREES. Now, you there refer to a conversation with Mr. Pinchot, which evidently from that letter was expressed in stronger terms than you have stated in the letter. I wish you would now relate to this committee that conversation; how it came about, what he said in that with respect to Mr. Garfield and with respect to Mr. Ballinger.

Mr. SMITH. The circumstances of the interview were these: I was about to start for the West, but I had just received a letter from the chief hydrographer of the survey, in which he mentioned certain power sites within the national forest that he thought were extremely important. He expressed his doubt whether they were fully protected under the Forest Service, and asked me to make sure by asking Mr. Pinchot whether they were fully protected from entry.

The CHAIRMAN. What time was this; about what time?

Mr. SMITH. That was the 23d of July.

Mr. VERTREES. The 23d of July, 1909?

Mr. SMITH. The 23d of July, 1909.

I was very busy, just leaving the city, but on my way from the department to the survey, I stopped in and made this request for information from Mr. Pinchot. I was about to leave, and I said, "I will see you in Spokane, I suppose?"

He said he would like to talk with me a moment, and he opened the door of his private office and ushered me in. Then his manner immediately changed. He charged me with downright disloyalty

to my former chief. I was surprised. If I had suspected that there had been any change in our hitherto very cordial relations, I would have made this inquiry the subject of correspondence, rather than of a personal interview. But I went in and he asked me full particulars. He said I was giving out newspaper articles that reflected on the past administration.

Mr. VERTREES. You mean the administration of the Interior Department?

Mr. SMITH. Well, he said, if I remember correctly, the last administration. And he referred specifically, at my request, to what I had said on water-power and other public-land matters. I told him then, as I have read from the letter to Mr. Garfield, that the only interviews that I had given out were the newspaper bulletins prepared carefully in the survey, and far from stabbing the Secretary in the back—knifing him in the back, were the exact words—I had sent copies of those with personal letters to Mr. Garfield. And I did not expect to get out any bulletins on that subject that I could not send to Mr. Garfield with a personal letter. Moreover, those were the only ones that I had gotten out, and it was the practice and policy of the survey to issue no press notices that did not bear our tag. I was responsible for those two and responsible for no other, and had no connection with any other press notices.

He then took up another line of argument, and said I was turning my back on Garfield and going on working with Ballinger. I then made the comment as to those two charges, that they were inconsistent; that I was going on with Mr. Ballinger in the same direction and on the same lines that I had worked under Mr. Garfield, and not only was the direction the same, but the speed was in fact slightly accelerated, although I was careful to add that that was no reflection on Mr. Garfield's administration, inasmuch as in any work you ought to accelerate speed as you progress. He spoke about the fact—

Mr. VERTREES. Right in that connection was anything said by you to the effect that when you first—that when Mr. Ballinger first came in as Secretary, not knowing what his policies would be, you thought of getting him on record so that you would know; if so, state that.

Mr. SMITH. I did make the statement that when Mr. Ballinger first came into office I was anxious to get him on record on several of those policies, but that I had long since gotten over that anxiety. I agreed with his policies, and I fully believed in his intent and spirit in pursuing these conservation policies. It was in that connection, I think, that Mr. Pinchot went on to say that it was contemptible to think how Mr. Ballinger had turned on his former friend and chief, and he characterized him then as a yellow dog, and went on further to say that if this fight continued—he mentioned first that he was the greatest enemy of the cause—meaning conservation.

The CHAIRMAN. That who was?

Mr. SMITH. That Mr. Ballinger was the greatest enemy of the cause. Then he went on to say that if there was any more of this talk about Garfield—and he specified at Spokane—if any criticism was made of Mr. Garfield at Spokane that he would lead the fight against Ballinger—that Pinchot would lead the fight against Ballinger. He specified the general matters of conservation, and I began

to specify, and I spoke about the coal regulations, that we had approved under Secretary Ballinger; those of April 10, I think, in which we had made an advance upon those former regulations, making much the same statements to Mr. Pinchot that I made to ex-Secretary Garfield direct in my letter. Then I cleared up the phosphate situation. I said it had been reported that Secretary Ballinger is turning back phosphate lands which were withdrawn under Secretary Garfield. I said there is no truth in that. We have made one restoration of one nonphosphate land, just as in the December preceding he made a restoration of nonphosphate lands under Secretary Garfield. The two were identical in policy. And then the matter of water power—the personal criticism was to the effect that I was toadying to Ballinger. I told him nothing could be further from the truth than that. Mr. Ballinger knew just what my attitude was to Secretary Garfield. He came into my office some time in February, preceding the change in administration—he had been in town—and I asked him if it was true, as currently reported, that he was to be the next Secretary of the Interior. He told me there was nothing decided on that point, or something like that. Then I remarked to him, and this is what I told Mr. Pinchot, that my first choice for the position was Garfield, by reason of our cordial relations when Ballinger was commissioner and I was director of the two bureaus of the department. That I would gladly put Mr. Ballinger as my second choice, and that I had not concealed my admiration and preference for Mr. Garfield.

Then the matter of the water-power restorations was taken up, and I told him that I knew absolutely nothing previous to the 23d of April, when I was called into consultation with Mr. Davis and Mr. Ballinger, but that I firmly believed from everything that Secretary Ballinger had said to me that he was doing everything that could be done to protect the water-power sites pending legislation by Congress. I also mentioned that everything he had said regarding Secretary Garfield's position on the withdrawal business simply indicated that there was a difference in the interpretation of the law. I mentioned, as uppermost in my mind at that time, one of the points—that we had just issued our conservation papers on the mineral resources and that this had been with the specific authorization of Secretary Ballinger. I told him we also had our water-supply papers, which had been contributed to the conservation commission and published by them. We had those in press, those two publications, representing the same papers that had been contributed to the conservation commission and published by them, but limited editions. Mr. Ballinger had shown his interest, I thought, in the subject by approving my proposition to republish it; that I understood there was no other bureau of the department that purposed to do the same with their contribution to the commission.

Mr. VERTREES. I want to get back to some of the details of that conversation. Did he say anything to you about sites, about the loss of sites, or what would happen if any water-power sites were lost, or even the opportunities for them were lost?

Mr. SMITH. Not in regard to the opportunities. Mr. Pinchot made the statement that if a single water-power site had been lost by reason of these restorations made by Secretary Ballinger that it would be fatal to him, or something to that effect.

Mr. VERTREES. Now you said he characterized Secretary Ballinger as a yellow dog. In what connection were those words used; what were the things that he was complaining of that the Secretary had done that he denounced him in that way?

Mr. SMITH. Well, that he was overturning the work that had been done under his predecessor and overruling some of the decisions of law that had been made under Secretary Garfield.

Mr. MADISON. What was the date of this conversation?

Mr. SMITH. July 23, 1909; that is the date of my letter—July 23, 1909.

Mr. VERTREES. Did he, in that same conversation and connection, say anything about sides, about your coming over to his side, and leaving Mr. Ballinger's side? If you say that he did, just give his language.

Mr. SMITH. Well, I can not give any language, because it all tended that way. I said, "Now, Mr. Pinchot, what do you want me to do—stop work?" He didn't have much of a reply. He said, "You ought to change face in this matter. I said, 'I am faced the same way I was before, and I can not change face.'" I said the only thing against me in this matter apparently is that I have confidence in Secretary Ballinger; that I believe in what he is doing. Then I went on to say that I could not be anything but loyal to my chief as long as the relations existed, explaining if there was any reason why I should not continue working along the lines that were right under my chief it was time for me to resign. And he said there was no need for me to talk nonsense about resignation, and I told him that in my lips that was pretty near sense. That is about all.

Mr. VERTREES. Did you get any reply from Mr. Garfield to the letter you mentioned, which you say you wrote him and in which you state you told him accurately and correctly what Mr. Ballinger had done—about what the policy was?

Mr. SMITH. No, sir; I received no reply to that letter.

Mr. VERTREES. Did you ever get any reply to that letter?

Mr. SMITH. Well, I—

Mr. DENBY. Wasn't the reply to that letter put in the record this morning?

Mr. VERTREES. No; that was another one.

Mr. SMITH. That was the preceding one—

Mr. DENBY. You mean the second letter; you are talking about the second letter, not the third letter?

Mr. SMITH. I am talking about the third letter.

Mr. VERTREES. In which you fully stated the situation and what Mr. Ballinger was doing, and what had been said to you?

Mr. SMITH. I received no reply to that letter. I happened to meet Mr. Ballinger—

Mr. VERTREES. Now, wait a moment. Where did you meet him?

Mr. SMITH. In November.

Mr. VERTREES. We will get to that in a moment. The first thing that you had that looked like a reply to that letter was in that Pinchot interview of July 23?

Mr. SMITH. No; the Pinchot interview of July 23 was the occasion of my writing the letter to Mr. Garfield.

Mr. VERTREES. The letter was of the same date?

Mr. SMITH. Yes, sir; written about six o'clock. It was just after we left Harrisburg. The interview was about an hour and a half, and I had to rush to make my 5.45 train, and this letter was written that evening.

Mr. VERTREES. As I understand you, and I wish to get that clear, these denunciations of Mr. Forester Pinchot were not predicated upon any personal misconduct of Mr. Ballinger, but his official conduct in that he had overruled certain policies that were very dear to Mr. Garfield and Mr. Pinchot?

Mr. SMITH. Yes, sir.

Mr. VERTREES. And that was the complaint; and it was because you were standing up to that that he denounced you as a turncoat and appealed to you to come over to their side. Did he say anything like that to you?

Mr. SMITH. He did not say, "Come over to my side." He told me I was a marked man and had better turn from the course that I was then pursuing.

Mr. VERTREES. That you were a marked man. What did he say he would do, if anything, at the Spokane Irrigation Convention, which was shortly to meet, with reference to Mr. Garfield's policy or Mr. Garfield?

Mr. SMITH. His words were "if that man or anyone else criticises Jim Garfield at the Spokane congress the fight will be on, and I will lead the fight against Ballinger."

Mr. VERTREES. Did he appear at that Spokane meeting?

Mr. SMITH. He was there; yes, sir.

Mr. VERTREES. Did he deliver an address?

Mr. SMITH. Yes, sir.

Mr. VERTREES. Did you not state to him in this conversation that in point of fact no fight had been made upon Mr. Garfield by Mr. Ballinger of which you had knowledge?

Mr. SMITH. Yes, sir; as I stated in my letter to Secretary Garfield—

Mr. VERTREES. Was any fight made at the convention by Mr. Ballinger or any of his friends on Mr. Garfield?

Mr. SMITH. I have no knowledge of any fight.

Mr. VERTREES. Were you there?

Mr. SMITH. I was there all the time.

Mr. VERTREES. Who assumed to speak as representing the ideas for which Mr. Ballinger stood; do you recall?

Mr. SMITH. Mr. Ballinger made an address, and I made an address which I supposed represented Mr. Ballinger, and, as I stated in my letter to Mr. Garfield, also represented him on the matter of the classification of public lands.

Mr. VERTREES. Was there anyone else that you recall that assumed to speak on that side of the question there?

Mr. SMITH. I represented, in a way, Mr. Ballinger, as I represented myself, in opposing some statements which were made on the floor of the House and in the press.

Mr. VERTREES. When you say you represented yourself, I suppose you mean by that the Geological Survey?

Mr. SMITH. Yes, sir.

Mr. VERTREES. That you considered certain statements that had been made in the press had reflected not only on Mr. Ballinger, the

Secretary of the Interior, but also reflected upon the Geological Survey—is that correct?

Mr. SMITH. That is correct.

Mr. VERTREES. And for that reason you did appear there and set forth what you conceived to be the truth of the facts, both with reference to his action and with reference to the action of the Geological Survey.

Mr. SMITH. It was also Mr. Ballinger's request that I should, instead of leaving the congress in the middle of the week, that I should remain; but I think it was rather my suggestion that I should speak in reply to certain charges that had been made by ex-Governor Pardee. My statement to Secretary Ballinger was that "if there is anything in those charges, the Geological Survey has been remiss in carrying out your orders, and I want to speak for the Survey."

Mr. VERTREES. You heard those speeches, and you delivered one. You heard Mr. Ballinger, did you not?

Mr. SMITH. Yes, sir; I heard Mr. Ballinger.

Mr. VERTREES. Now, I ask you to state whether or not either you or Mr. Ballinger attacked either Mr. Pinchot or Mr. Garfield, or their official acts or policies as Secretary of the Interior or as Forester, respectively.

Mr. SMITH. Not in the least.

Mr. VERTREES. That is to say, there was no basis then for any action upon his threat that if anything was said that reflected upon Mr. Garfield he would lead the fight.

Mr. SMITH. I did not see what the basis was. I heard no expression that would call out a fight.

Mr. VERTREES. Did you hear Mr. Pinchot's address?

Mr. SMITH. Yes, sir.

Mr. VERTREES. On what lines did it proceed?

Mr. SMITH. Why, as I recall, it was on the general line of conservation, saving the western country for the American people, home-seekers and the people generally. It was——

Mr. VERTREES. Now, when was this—I beg your pardon, go ahead.

Mr. SMITH. It was an address that I considered altogether in good taste.

Mr. VERTREES. He did not attack anybody else?

Mr. SMITH. No; not in the least.

Mr. VERTREES. In those speeches no attacks were made by either side?

Mr. SMITH. The impression that I had at the time was that everything was getting on smoothly, until ex-Governor Pardee broke in.

Mr. VERTREES. You said "broke in." How did he break out?

Mr. SMITH. He was to speak on one subject and he spoke on Ballinger instead.

Mr. VERTREES. Was he not all that time at that meeting closely associated and in conference with Mr. Pinchot?

Mr. SMITH. I was in conference with Mr. Pinchot and closely associated with him, too.

Mr. VERTREES. What were you associating with Mr. Pinchot about?

Mr. SMITH. I was continuing the same relations that I had continued up to July 23.

Mr. VERTREES. Your personal relations up to July 23 had been pleasant?

Mr. SMITH. Yes, sir; but I would like to add that I saw nothing of the same temper toward me, or the same feeling toward me, shown at the Spokane meeting that was shown at that interview of July 23.

Mr. VERTREES. That seems to be rather exceptional or excessive.

Mr. SMITH. That was one other time. The other interview I spoke of was the time when our relations were not especially pleasant.

Mr. VERTREES. You say you were with him out there. Do you mean in a social way?

Mr. SMITH. I sat on the same seat with him at one of the meetings; he sat in front of me at another; and I walked down to the club with him, where he was stopping, at another time.

Mr. VERTREES. Were you all sort of keeping an eye on each other?

Mr. SMITH. No; I did not recognize at that time—I did not care to recognize Mr. Pinchot as the leader of the fight.

Mr. VERTREES. What I want to get at is, when the fight did come on and did develop—the fight did come, did it not?

Mr. SMITH. I thought so.

Mr. VERTREES. Did it not develop that Mr. Pinchot and this ex-Governor Pardee that you say broke in, that they were closely related and in conference in that fight?

Mr. SMITH. Why, in one particular instance I thought that was so, and I asked that we have a truce on Friday—

Mr. VERTREES. Who did you ask that of?

Mr. SMITH. Of Governor Pardee, and he beckoned for Mr. Pinchot to come over, and the three of us talked it over. Mr. Pinchot agreed to the truce and Mr. Pardee and I settled it.

Mr. VERTREES. Let me interrupt you there. A truce implies that there had been a little war before that.

Mr. SMITH. On Wednesday, after Secretary Ballinger spoke, and after he left the hall—and I left the hall with him, because I wanted to take up some departmental matters—and unless somebody would think that was something in regard to power sites, I will say that it had to do with underground waters, and I went to the hotel with him, and while I was going—

Mr. GRAHAM. For drinking purposes?

Mr. SMITH. No; for irrigation purposes. It was with regard to the segregation of land in Wyoming under the enlarged-homestead act, and he wanted to confer with me on the matter, and I wanted to confer with him, and I went back to the hotel with him. Mr. Newell was with us, and while we were gone the Pardee speech came off. I did not hear that speech. I secured from Mr. Pardee some statements afterwards of what he said, and then I went to the newspaper office and read over the report that evening, so that I was well informed of what he did say. And the next morning I tried to answer him (that was Thursday), and Friday there was a proposition to renew the hostilities. I had a telegram from Secretary Ballinger on the subject, and Governor Pardee had secured an affidavit from Evans, the newspaper man.

Mr. VERTREES. Just explain all that. You say you had a telegram from Secretary Ballinger. Where was the Secretary?

Mr. SMITH. The Secretary had left on Wednesday evening, I believe, with Mr. Newell, to meet the Senate committee farther east and go over some of the irrigation projects.

Mr. VERTREES. You say Governor Pardee had an affidavit from a man named Evans?

Mr. SMITH. Yes, sir.

Mr. VERTREES. Wait a minute. Was he a newspaper man?

Mr. SMITH. When he was not sailing under false colors, he was a newspaper man; other times he was a representative of J. G. White, and that is the way he got his information, or misinformation, on power sites.

The CHAIRMAN. Who is J. G. White?

Mr. SMITH. They are a reputable firm—the best engineers in the country—and Mr. Evans went after those power site grab data as the representative of J. G. White, which he was not.

Mr. VERTREES. What I want to get at is whether this man Evans was put up to you as a reliable newspaper man; and if so, was it not by Mr. Pinchot?

Mr. SMITH. I had known him here in Washington, and he had been in my office a number of times. I saw him out there and told him there was nothing in his story of 15,868 acres being grabbed by the power people in Montana, and I want to interject here that I believe this has been admitted by Mr. Pinchot before the committee, but I told him that that was wrong, and I also told Mr. Pinchot it was wrong.

Mr. VERTREES. You told Evans?

Mr. SMITH. I told Evans that it was wrong.

Mr. VERTREES. Do I understand now that Evans—

The CHAIRMAN. Did you tell Mr. Pinchot out there at that time that there was nothing in it?

Mr. SMITH. Well, Senator, I told him that I happened to have a pretty good record about water-power withdrawals, and there was nothing in that story, because it was not even reasonable.

The CHAIRMAN. What time was that?

Mr. SMITH. Why, I think that was on Wednesday.

The CHAIRMAN. You remember Pinchot's letter to the President introducing Glavis?

Mr. SMITH. Yes, sir; it is in the record.

The CHAIRMAN. Calling attention to those water-power withdrawals—was it before that?

Mr. SMITH. I do not remember the date of that, but I told it to him several times—on Thursday, and possibly on Wednesday.

The CHAIRMAN. At that convention?

Mr. SMITH. Yes, sir. The newspaper story came out on Wednesday afternoon.

The CHAIRMAN. What reply did he make when you told him about that?

Mr. SMITH. Why, that he had it from a newspaper man.

Mr. VERTREES. His reply was that he knew better, because he had it from a newspaper man?

Mr. SMITH. Yes, sir.

Mr. VERTREES. Was it this man Evans?

Mr. SMITH. Yes, sir.

Mr. VERTREES. And what was the Pardee affidavit that you spoke of?

Mr. SMITH. An affidavit which Evans had prepared to use against the telegram which I had from Secretary Ballinger.

Mr. VERTREES. It was an affidavit of this Evans?

Mr. SMITH. Yes, sir.

Mr. VERTREES. And did it relate to this same grab, as you call it, of the 15,000 acres in the time intervening between the restoration by Ballinger of power sites and their rewithdrawal?

Mr. SMITH. I understood from Mr. Pardee that it corroborated under oath everything that he had written, although at that time they had reduced that acreage 99 per cent on account of a misplaced decimal, as they claimed.

Mr. VERTREES. In other words, after the exposure they changed the decimal.

Mr. SMITH. Well, I think the decimal was changed before any exposure by me. I think it would hardly hold water of itself.

Mr. VERTREES. But Mr. Pinchot had the large figures, areas, 15,000, in his mind when he talked to you, did he, or the small ones?

Mr. SMITH. I could not say whether when we first talked it was still 15,000 or had shrunk down to 158 acres.

Mr. VERTREES. It was one or the other; but whatever it was, you told him it was not true?

Mr. SMITH. I told him it was not true, and I told Governor Pardee: "You are talking about thousands, and it has already gotten down to 158 acres, and we do not know how small it will be to-morrow."

And then with regard to that affidavit. I happen to know that Evans was going on to Yellowstone, leaving the Missouri River, and also discuss some withdrawals and restorations on the Yellowstone. I knew that from the fact that I went to get the stenographer to typewrite a statement that I had, Mr. Evans was dictating this affidavit, and while I did not intend to listen to what he said, inasmuch as he kept on dictating after I came into the room, I caught several sentences of it. And then I stated my errand and made an appointment to have some typewriting done, and left the room, but I knew from that he was going on to the Yellowstone with his charges about power-site grabs.

Mr. OLMSTED. Did he carry the decimal forward to the Yellowstone?

Mr. SMITH. I should expect much the same kind of statistics on one river as on another.

Mr. VERTREES. You have mentioned the fact that you had gotten a telegram from Mr. Ballinger?

Mr. SMITH. Yes, sir.

Mr. VERTREES. What was the nature of that telegram?

Mr. SMITH. It was simply saying that he had seen certified copies from the Land Office of the records, and he was en route to eastern Montana, I think. He had seen certified copies, and was convinced that no such entries had been made.

Mr. VERTREES. In other words, confirming your statement?

Mr. SMITH. Confirming the statement which I had from general records. I might say that the records which I had were on the subject of land classification. I had no idea that this question would be taken up, but I had with me the latest records of the office

with regard to coal-land classifications, oil withdrawals, and power sites, and enlarged homesteads; in fact, all of the public land work of the survey, so that I could answer questions if there was any discussion of my paper on the classification of public lands.

The CHAIRMAN. What was the date of that convention out there?

Mr. SMITH. That was the second week in August; it was something like the 9th, 10th, and 11th, and 12th, possibly.

Mr. VERTREES. Well, did either your or Mr. Ballinger attack either Mr. Pinchot or Mr. Garfield there?

Mr. SMITH. Certainly not.

Mr. VERTREES. Or their official acts?

Mr. SMITH. And I might right here say that the reason I called for that truce on Friday was that I did not want the Yellowstone withdrawals of Secretary Garfield brought into the discussion. And far from attacking him, in arranging that truce, I was primarily interested in not having Secretary Garfield's name dragged into the discussion.

Mr. VERTREES. Why didn't you want that brought in? I have not had that explanation, or heard you explain it. What was there about it?

Mr. SMITH. Why, I did not think that Secretary Garfield was making the proper kind of withdrawals when he used the first form of reclamation service withdrawals, as a cover for power-site withdrawals. Those that were discussed by Governor Pardee and myself on Thursday related to withdrawals on the Missouri, which were in terms of conservation of water resources and power sites, I think, as indicated in the schedule that we have. And that was, in my mind, a fair and square withdrawal. I had my doubts even then with regard to the power-site withdrawals that were made in terms of the first form of reclamation.

Mr. VERTREES. That was in September, this meeting—the first part of September?

Mr. SMITH. No; August.

Mr. VERTREES. August, I meant.

Mr. SMITH. The second week, I believe.

Mr. MADISON. Just a minute before you leave that. You say you had your doubts about the first form of withdrawal employed by Mr. Garfield. Explain what that form was.

Mr. SMITH. Those forms are already in the record, and I can not quote them—

Mr. MADISON. Give us just a general idea. What was the objectionable feature?

Mr. SMITH. They pretended to be withdrawn for the purpose of something relating to a reclamation project.

Mr. MADISON. When they were not, in fact, with regard to reclamation projects?

Mr. SMITH. That was my information, that they were not, and I did not want to see those brought into the discussion at that time.

Mr. MADISON. Mr. Smith, to what extent were those withdrawals made under that form?

Mr. SMITH. That is shown in the table.

Mr. MADISON. Just give it generally. There have been so many tables that have been put in here, and we have not time to read them all.

mention made. In fact, the one thing that he did say was so different in tone that I think I ought to repeat it. We were discussing these withdrawals—

The CHAIRMAN. Where was that—at Spokane?

Mr. SMITH. At Spokane, Senator. I said I have got to bring the facts out as I know them—and that was Thursday morning, I think, before I went on the platform to try to answer Governor Pardee, and he said, "You are simply taking a public stand on the Ballinger side."

Mr. VERTREES. Now, I want to ask you, furthermore, about these conversations there with reference to this reliable man Evans. I want to know whether or not Mr. Pinchot either brought you to Mr. Evans or Mr. Evans to you, and talked over the question of Evans's responsibility, and gave you as an instance of it the fact that he had had the Glavis story and kept it for some little time; and if you say that that happened, state just exactly what was stated in that conversation with respect to that.

Mr. SMITH. On the day that the Glavis story came out in the press—whether that was Friday or Saturday, I can not tell; I haven't looked the matter up; but on the forenoon of the day the Glavis story was given to the press I was standing in the room where the convention was held, and Mr. Pinchot joined me and beckoned for Mr. Evans to come over, and he said, "Mr. Smith, I want you to know that Evans is reliable," and I probably answered, "Show me," or something like that. He said he has known this Glavis story, these charges against Ballinger, for two weeks—I believe he said two weeks, that is my remembrance of it—and he has kept it quiet. And Evans said in a mournful way, "Yes, and all I got for it was a scoop."

Mr. VERTREES. That was either August the 10th, 11th, or 12th, or somewhere along there, was it not?

Mr. SMITH. It was either Friday or Saturday of that week. I was not convinced by the showing.

Mr. GRAHAM. Was Mr. Glavis's story published at that time?

Mr. SMITH. It was published on that morning. What Mr. Evans meant by being a "scoop" was that he wanted to use it as an afternoon story, and it came out as a morning story.

Mr. GRAHAM. Before you pass from that matter, if you will allow me to interrupt, Mr. Vertrees, let me see if I can get your mental attitude toward Mr. Garfield right. If I understand you correctly, his attitude or position was that he was going to preserve those water-power sites and other things of that sort to the public, even though he had to violate the law to do it.

Mr. SMITH. I would not like to state that that was Mr. Garfield's attitude. I did not get that impression when I was serving under him. I got the impression that he would go to the limit in protecting the people's rights in the matter, and I sympathized with him fully.

Mr. GRAHAM. Within the law, however?

Mr. SMITH. Within the law.

Mr. GRAHAM. That is what I wanted to understand.

Mr. SMITH. That was the extent to which I sympathized with him and the extent to which I thought he went at that time.

Mr. GRAHAM. That is the thought I wanted to get, the extent to which you thought he was willing to go.

Mr. VERTREES. You said "at that time." What did you think about it after your conference with him up in New York in November?

Mr. SMITH. Up to that time I thought that those power-site withdrawals, in terms other than power-site withdrawals, had been passed over his desk without giving the matter much consideration.

Mr. MADISON. You thought that after the New York conversation?

Mr. SMITH. I thought that before, and that New York conversation changed my mind. I would not put so much stress on that as I would on the withdrawals for administrative sites and ranger sites. Some people charge in those days that those were just simply masquerading withdrawals, if I may use that term.

Mr. VERTREES. Shams.

Mr. GRAHAM. Mere pretenses.

Mr. SMITH. And it was merely to protect the water-power sites, but I did not understand that to be the real policy until Secretary Garfield told me of it. Now, I ought to say here that up to the 23d of April I knew nothing about these water-power site withdrawals or the reclamation site withdrawals. It was a closed book to me. I did not know about the restoration until it appeared in the newspapers, and my first connection practically with the water-power site withdrawals was when I was summoned into conference by Mr. Ballinger. Is that sufficient, Mr. Madison?

Mr. MADISON. I want to ask another question, Mr. Vertrees. I will ask you to what extent were those administrative or ranger site withdrawals made, if you remember? Perhaps the figures are here.

Mr. SMITH. They are in the record.

Mr. MADISON. Do you remember what they are? What number of acres were withdrawn as administrative or ranger sites?

Mr. VERTREES. About 40,000, I think.

Mr. MADISON. Can you give it in round numbers?

Mr. SMITH. I will state, Mr. Madison, that my information is derived from this record. I find it at page 1157. It is mentioned on page 1157 by Mr. Pinchot.

The CHAIRMAN. That is in the hearing?

Mr. SMITH. That is in the hearing; yes, sir. I think I have the right place. That is where he describes it in the letter. Mr. Ballinger gives the figures in his letter to Senator La Follette of May 13, which appears in the records on page 1181.

Mr. MADISON. For my information at this time, and in connection with your testimony, just state how many acres were withdrawn for administrative or ranger sites.

Mr. SMITH. Four hundred and ninety-six tracts of land had been withdrawn as ranger sites, as I understand it, and then were rewithdrawn under date of March 2, 1909, by Secretary Garfield, to the estimated total area of about 40,000 acres, and those withdrawals of March 2 by Secretary Garfield were made in terms that expressed the purpose of the withdrawals. Previous to that time they had been picked up, a few at a time, as I understand, as ranger sites. I had suspected that, but I did not believe it was the policy.

Mr. MADISON. There are about 40,000 acres in all that were withdrawn?

Mr. SMITH. Of that class.

Mr. MADISON. As ranger sites?

Mr. SMITH. Well, I do not understand that that was the total, but that is the total that they by this act said were power-site withdrawals that had been taken up as ranger sites. This is the source of my information. I have no personal knowledge.

Mr. VERTREES. In making either withdrawals or restorations during the administration of Mr. Garfield, did Mr. Garfield, as Secretary, or the Reclamation Service, Mr. Newell or Mr. Davis, consult the Geological Survey in making any of them?

Mr. SMITH. Not to my knowledge did they either consult myself or any one under me. I would like to state that Mr. Newell one time told me that he had consulted me on the subject with Secretary Garfield back in the summer of 1908. He told the time we met on the train, but I do not remember any such conversation, and I do remember that the whole time between Crow Agency, Mont., and Sheridan, Wyo., was spent by Secretary Garfield and myself at one end of the car discussing an entirely different departmental subject, and that there was no opportunity for discussing that subject, and after leaving the train while they were waiting at Sheridan that I left the party, another subject was discussed with one of the Reclamation Service engineers, not relating to water power in the least. So that I remember of no instance of being consulted in this matter. I expressed myself, if you will remember, in the letter already in the record to Secretary Garfield, that I regretted that he had not given me the opportunity to turn over to him as Secretary of the Interior the use of the hydrographic and topographic records of the survey in this connection.

Mr. VERTREES. Now, Mr. Smith, you have stated that the storm broke on Mr. Ballinger out there in Spokane—not in the language in which I have put it, but that is the thought. Did you then deem it proper or advisable to acquaint anyone in your office with the situation, so that they might know and conduct themselves accordingly? And if you say you did, state whether you did it verbally or in writing; and if you wrote a letter, state to whom and when, and read the letter to the committee.

Mr. SMITH. As far as possible, I say yes to that question.

Mr. VERTREES. Well, that is what I want you to say, and then that you will read the letter. State first to whom you wrote it and why you wrote it.

Mr. SMITH. I wrote a letter after I got on the train and started to California where I was to join one of the survey parties. I wrote a letter describing my impressions of the Spokane meeting and addressed it to Colonel Rizer, the chief clerk of the survey, who in my absence was acting director. It was a confidential letter, not an official letter.

Mr. VERTREES. What is the date?

Mr. SMITH. It is dated August 16, 1909.

Mr. VERTREES. Where were you when you wrote that letter?

Mr. SMITH. I was somewhere between Portland and San Francisco.

Mr. VERTREES. On the train?

Mr. SMITH. Yes, sir; on the train.

Mr. VERTREES. Very well, please read the letter.

Mr. SMITH. This letter is a typewritten copy of a pen copy. It is as follows:

August 16, 1909.

MY DEAR COLONEL: Herewith is the record of the Pinchot-Ballinger trouble, which came to a head at Spokane. As my representative you ought to have the facts before you, though our policy should be to keep the Survey out of the fight, as I've told Secretary Ballinger, except when something concerning the Survey is dragged in. After you have read this and shown it to Mitchell, Veatch, Parker, and Hayes, I wish you would send it to Mrs. Smith.

It is evident that this is not a fight waged primarily in behalf of the Reclamation Service and Mr. Newell. I think it dates back to Commissioner Ballinger's administration, when there were differences of opinion between the General Land Office and the Forest Service, as well as the Reclamation Service. The whole conservation movement is now linked up with Mr. Pinchot's views on the subject, so that orthodoxy in the cause means agreement with Mr. Pinchot. As I now look at it, any issue is to be raised that can be made against Secretary Ballinger, not because of that issue, but because Secretary Ballinger is to be overthrown because he opposes Pinchot's way of conserving. I even believe the Reclamation Service trouble is exploited simply to aid Mr. Pinchot. I don't know to what extent Mr. Newell may be involved, though I know he has been advised by Mr. Heney, if not by others of the Reclamation Service, to keep out of it, and indeed I'm inclined to believe that had the Reclamation Service kept out of this fight, his chances to retain his position would be fairly good. But at Spokane it was current talk that the Reclamation Service publicity bureau was working with the Forest Service people. I was thankful, however, that Mr. Newell went away with Secretary Ballinger. Further, I now think that Mr. Pinchot's bitter attack on me the day I left Washington, of which I asked Mitchell to tell you, was simply an effort to bring Secretary Garfield in as an issue that could influence me. Mr. Pinchot told me that every move of Secretary Ballinger was inspired by a desire to discredit Secretary Garfield, and that if there was any criticism of Secretary Garfield he would lead the fight against Ballinger. Now, there was no criticism of Secretary Garfield, and yet the fight came off as planned. The congress was organized, the issues were shaped, the orator chosen, the newspapers primed—in short, all guns loaded. The result was that the power-site charge was defective, and the Alaska coal charge went off earlier than planned. The addresses by Newell, Pinchot, Ballinger, and Thompson, of Seattle, were all so good and in good taste that those who looked for trouble were disappointed. Then Governor Pardee, who was down to speak on "Irrigation interests of the people," spoke on the "Sins of Ballinger," and though he told me that he intended nothing personal and that he would be glad to have me tell Secretary Ballinger so, he insinuated that Ballinger was either a fool or a knave, and rather intimated the latter as his favorite hypothesis. This was Wednesday p. m. The Secretary and Newell left that evening, and though I had planned to leave at 7 myself, at 6 the Secretary asked me to remain and go on the department watch service. This meant that I was to refute Pardee's misstatements and stand out in the open opposed to Mr. Pinchot and his associates. I was careful to make every move in the open, even at the risk of having them forestall my moves, and I kept in touch with Mr. Pinchot and his advocates, as well as his reporter, Evans, and whatever resentment Mr. Pinchot may feel at my activity, he expressed it in the statement that I had gone on record as supporting Secretary Ballinger, though in our many talks he showed none of the resentment and bitterness that characterized his fatherly talk to me in Washington. I was playing all the time to make an unequivocal stand in support of Secretary Ballinger's policies as I knew them, and yet to avoid any break with Pinchot or Pardee. I think I succeeded.

Before I spoke on Thursday, McGee and President Barstow tried to switch me over to Friday, but I refused to wait; then we agreed on between 11 and 12 that forenoon, and when that time came they tried to keep me off the platform on the ground that Pardee was upstairs in the resolution committee meeting, but inasmuch as the governor knew from my lips that I was to speak that forenoon, I stood on my right to the platform, and I noticed that as soon as I began to speak the governor appeared in the hall. Earlier in the forenoon he threatened to skin me alive if I spoke against him, but when he walked past me on the platform he reduced this threat to taking my scalp, and even then, as he confessed afterwards, he was thinking the same scalp was on pretty tight. So the governor and I avoided personalities and contented ourselves with showing up each other's falsehoods. The governor was there to fight Pinchot's fight. Evans of the "United Press" had been out on a still hunt, posing as a J. G. Whiteman under an assumed name. The big grab shrunk every hour, and Pardee's insincerity made a bad impression on many of the delegates. I played the other game, and while I didn't draw many tears, I was successful enough to make them try to gag me with a motion to adjourn. It was then that I most enjoyed myself, for I knew the fair-play spirit would back me up and give me a hearing.

I don't think the whole thing amounted to much. The day following I had a telegram from Secretary Ballinger, and Pardee had an affidavit from Evans and we agreed to sit still until someone else might start the fighting. And we sat there watching each other till the congress adjourned. Such is a gentleman's agreement.

The Alaska story leaked, much to the disgust of Ballinger's enemies. I would give that charge more consideration if I didn't know that there has been a search high and low to get material and that it was being held back to spring at the best moment. I

am afraid that the well-meaning conservationists are using the devil's own weapon to fight the "interests".

Back of it all, try to hide it as they may, is the issue of whether control shall be executed by legislation and the making of law or by administration and the construction of law. As Campbell of the Department of Justice said at a banquet—there is only one construction of law to be sought, and that is the proper construction. Or as another lawyer put it, the liberal construction is when it's my way, and the strict construction when it favors the other fellow.

I have yet to learn that any power sites have been stolen, and you can tell Veatch that we'll keep right on in our conservation work whether it bears the union label or not.

With regards to the lunch mess and all others,

(Signed) GEO. ORIS SMITH.

The CHAIRMAN. That is admitted.

Mr. SMITH. Mr. Chairman, I might say that that was not written for publication.

The CHAIRMAN. It is still very good.

Mr. GRAHAM. Yes; it is. It is going to be published.

Mr. VERTREES. Mr. Smith, who is Mr. Veatch?

Mr. SMITH. Mr. Veatch is a geologist, who has been placed in charge of our land classification work.

Mr. VERTREES. Who are Mr. Mitchell, Mr. Parker, and Mr. Hayes?

Mr. SMITH. Mr. Mitchell is my private secretary, Mr. Parker is chief of division of mineral resources, and Doctor Hayes is chief geologist of the survey.

Mr. VERTREES. I see that you asked them to send the letter to Mrs. Smith after it had been read.

Mr. SMITH. On the train it is hard to write, and I tried to make one letter go as far as possible.

The CHAIRMAN. I think you wrote a very good letter on the train.

Mr. VERTREES. You have spoken there of the conservationists and the well-meaning conservationists. I would like to have some expression from you on the doctrine of conservation, Mr. Smith: what you understand it to be rightfully and properly; whether you favor it or not.

Mr. SMITH. When I speak of well-meaning conservationists—I now speak respectfully—that is the kind of conservationist I would like to be considered myself. I believe in conservation.

The CHAIRMAN. Let me there ask a preliminary question. Is it not a term that is hard to define?

Mr. SMITH. Well, I do not want to be called a conservationist, unless they allow me to define the term.

The CHAIRMAN. Proceed.

Mr. SMITH. The first use I made in an official report of the word "conservation" was about ten years ago, when I was speaking against the waste of an expendable natural resource—that is, artesian water in a certain basin in the State of Washington—and reporting on that I used the term of "conservation of the water resources." I think that the term "conservation" is opposed not only to the waste of an expendable resource, but also to the nonuse of a nonexpendable resource, like water power or agricultural land. To me conservation means utilization and development. It means utilization with a maximum efficiency and a minimum waste.

Mr. GRAHAM. Mr. Smith, just there. The word "conservation," of course, implies preserving for somebody or other. Now, to whom do

you refer, or whom do you regard as being back of it; for whom is it to be conserved?

Mr. SMITH. It is to be conserved for some one to use.

Mr. GRAHAM. That is the question. Whom, in your definition of the subject?

Mr. SMITH. The natural resources of this country, I suppose you refer to. Those should be conserved for the use of this generation and the use of the succeeding generations. But they should not be conserved for the use of succeeding generations at the expense of this generation.

Mr. GRAHAM. At too great an expense to this generation.

Mr. SMITH. At too great an expense to this generation. I accept your modification, Mr. Graham. In fact, I believe they can not be conserved at any excessive expense to this generation.

Mr. GRAHAM. Let me help you if I can to further clarify the subject. Take the Alaska coal question.

Mr. SMITH. Yes, sir.

Mr. GRAHAM. Suppose the possession of that coal by the syndicate we have heard so much about would make the coal go further and would greatly enrich the syndicate on the one hand. Suppose, on the other hand, that it were preserved by the Government and not handled quite so economically, but at more good to the general public. Now, which of those views would most nearly agree with your idea of conservation?

Mr. SMITH. When we speak of development, possession and development, I think we want to draw the distinction between the corporation or the Government as a producer and the people as consumers. Now, it is possible to secure the best kind of development under a corporation, but it may be at an excessive cost to the consumer. Now, I should be against development by the consumer, however good that development was, unless the people's rights as consumers were amply protected. On the other hand, I would not be in favor of governmental ownership and operation, however much it might be to the advantage of the consumer, unless that operation was efficient and at not too great a waste, because the Government might operate a mine at a loss, so that the people would have to be taxed for the operation.

The CHAIRMAN. Mr. Smith, what do you think of this conservation policy in Alaska of preventing the people there from using the coal, and obliging them to take their coal from British Columbia—from Vancouver Island? What do you think of that conservation system?

Mr. SMITH. That is not a conservation policy according to my view.

Mr. MADISON. Do you know of anybody who is advocating such a policy as that?

Mr. SMITH. Of keeping the coal?

Mr. MADISON. As suggested by the chairman.

Mr. SMITH. I think that if we should continue to go in the way that the most prominent signboards point, that is what might result.

Mr. MADISON. What do you mean by that? Please explain.

Mr. SMITH. Putting an excessive valuation upon the coal of Alaska and saying until people come here and are willing to pay \$1 a ton for

it in the ground the Government ought not to give up the birth-right of the American people.

Mr. MADISON. Who is advocating that?

Mr. SMITH. Hampton's Magazine.

Mr. MADISON. Have you any other authority?

Mr. SMITH. Why, generally, I would say that is the way the people take these magazine articles—on faith. That is the way they are feeling. There is a general sentiment that there is that great value to the coal of Alaska, and they do not stop at Alaska; they are bringing the same proposition down into the States.

Mr. MADISON. I may say that if I follow anybody in that idea of the conservation of natural resources I will take President Roosevelt; I think he is the great exponent of the doctrine of conservation of natural resources. Have you ever known of him advocating anything of that kind?

Mr. SMITH. No, sir.

Mr. MADISON. Have you ever known of Secretary Garfield advocating anything of that kind?

Mr. SMITH. I have not.

Mr. MADISON. Have you ever known of Mr. Pinchot advocating anything of that kind?

Mr. SMITH. I have never heard Mr. Pinchot discuss that matter of Alaska coal.

Mr. MADISON. So that the persons that you have heard or read from as advocating those things have been principally Hampton's Magazine?

Mr. SMITH. But there are people who are following the line projected by President Roosevelt and Mr. Pinchot, but they lack intelligence enough to make the right decisions along that course.

Mr. MADISON. Yes; but those are not the people that are affecting American thought and action along the lines of conservation.

Mr. SMITH. I think that if to-day the Alaska lands went for less than the people have been led to believe they are worth that there would be a great howl go up from the people, and that one dollar comes nearer to expressing what the people think than the half cent that Mr. Brooks gave in his testimony to you as to the value of Alaskan coal in the ground.

Mr. GRAHAM. Can you not conceive of a situation where in a case, even as the chairman states, it would be a wise course to pursue temporarily, to pay extravagantly high prices for coal from British Columbia rather than to get the supply of coal in Alaska placed in permanent jeopardy?

Mr. SMITH. Yes, I would admit that; but there is a limit. I would like to say that temporarily, in my mind, does not mean year after year continuing the same course.

Mr. GRAHAM. How long has the public here known of the immense value of the Alaska coal deposits; that is, had definite information about them?

Mr. SMITH. The record will show when the report of the Geological Survey first called attention to the Bering River.

Mr. GRAHAM. About how long ago has it been?

Mr. SMITH. Our first work up there was in 1906.

Mr. GRAHAM. Not very long ago.

The CHAIRMAN. Before that, Mr. Smith?

Mr. SMITH. That was the first detailed work, Senator. We knew of the field before that.

Mr. GRAHAM. I am not speaking of general knowledge. I am speaking of specific knowledge of the great value of the coal deposits there.

Mr. SMITH. I think our reports began to indicate the value of those coal fields about the same time the Cunningham people located them.

Mr. GRAHAM. Enough time has not elapsed since to enable anyone to justly draw the inference that those coal fields would lie there unused always.

Mr. SMITH. No, sir; that is true.

Mr. VERTREES. Mr. Smith, did the Russians not develop the fact that there was coal in Alaska as early as 1854?

Mr. SMITH. The coal fields have been known, but the detailed information regarding those deposits that are mentioned in many magazines—

Mr. VERTREES. Is it not a fact that the United States has owned Alaska since 1867?

Mr. SMITH. I believe that is correct.

Mr. VERTREES. Is it not a fact that there has not been a coal mine opened in Alaska, except a lignite mine down in the Cook Inlet?

Mr. SMITH. I so understand.

Mr. GRAHAM. Is it not also a fact that it was only within the last few years comparatively that there was any great need for coal in that country; that there was any development of Alaska, and not very much development on the Pacific coast?

Mr. SMITH. There has been need for coal on the Pacific coast for many years.

Mr. GRAHAM. I qualified the word "need" by the word "great."

Mr. SMITH. Great need then. In 1901 the Geological Survey made the first general report on the coal resources of the United States. In that report the different geologists cooperated, each taking the field with which he was familiar. Mr. Brooks then set forth, much as he set forth before the committee, the conditions in Alaska. I had the Pacific coast field as my part of the report, and I called attention at that time to the large amount of foreign coal that was coming into our Pacific coast ports.

Senator FLINT. Mr. Smith—

Mr. GRAHAM. If you will pardon me I want to ask one more question and then I will be through.

Senator FLINT. Certainly.

Mr. GRAHAM. Is it your position that because we have owned Alaska since 1867, and did nothing to develop the coal fields there, that therefore those coal fields would only be developed now by turning them over to some great financial syndicate to develop?

Mr. SMITH. I would not make that statement at all, Mr. Graham.

Mr. GRAHAM. Does the past history of the territory from 1867 to 1900 furnish any light which will enable us to guide our conduct toward Alaska in the future; that is, any substantial light?

Mr. SMITH. I should think that we ought to be guided by the past and present for the future.

Mr. GRAHAM. I know, but do the facts, as they occur in Alaska from 1867 to 1900, shed any light that gives us a guide as to what our conduct should be there in the future?

Mr. SMITH. I am sorry that you did not ask that question of the chief of our Alaska division. I am not qualified especially on Alaska, but I would like to make this statement, quoting substantially what Mr. Brooks said to the committee, namely, that the present is something of a guide, and Alaska industrially is going downhill by reason of what may be called the coal-storage proposition.

Mr. GRAHAM. Well, would you draw from that the conclusion that in order to keep it from going downhill now we should turn the tremendous mineral resources of Alaska, coal included, over to some powerful financial syndicate to develop them?

Mr. SMITH. I do not understand that any responsible party has advocated turning Alaska, or any large part of Alaska, over to any large syndicate for operation. What I want to see, what Mr. Brooks wants to see, and from my conversation with him, I thoroughly agree with him—I want to see some of that coal land passed over to somebody—the small operators. I want to see some of the lignite in the interior fields turned over to the small operators; give it to them, provided there is some nominal fee charged, so that the United States will show its rights in the matter, and so that it will be legally done. We do not want squatters on it; but there ought to be some small license that will give them a chance to take out that lignite and survey the forests up there for timber purposes; not use the forest for fuel. You can not use the coal for timber, so you ought to use the forest for timber and the coal for fuel.

Mr. DENBY. In your opinion, Mr. Smith, is the blame for the present so-called storage situation properly to be placed on the laws that have been passed to govern the Alaska coal lands?

Mr. SMITH. I do not think the Alaska coal-land law is ideal. Mr. Brooks expressed my opinion as well as his own when he said that \$10 was too high for the poorer grade and too low for the higher grade.

Mr. DENBY. And what about the amount that might properly be given to any one entry?

Mr. SMITH. The Alaska law, as I understand it, is better than the law prevailing in the States?

The CHAIRMAN. That is the law of 1908?

Mr. SMITH. Yes, sir.

Senator FLINT. Mr. Smith, to get your viewpoint on conservation, you are familiar with the timber conditions in the West, are you not?

Mr. SMITH. Yes, sir; it happens that a large part of my geological work was within national forests.

Senator FLINT. And you know, as a matter of fact, with the exception of the timber that is now within the forest reserve, that a great proportion of it is in the hands of two or three, or comparatively few large corporations.

Mr. SMITH. Yes, sir.

Senator FLINT. Now, from that viewpoint, do you not think that we ought to take great precaution so that the Alaska coal land should not be in the same condition as our timber land is to-day, even though it may retard the development of Alaska to some extent?

Mr. SMITH. I do not think that the last modification of your question is necessary. I think that corporations can be controlled without stopping work.

Senator FLINT. That is a point I want your view on. What is your suggestion, then—say that this Government could part with the

title to the land, and it would not vest in the hands of two or three great corporations that would control that coal supply?

Mr. SMITH. Now, when you speak of controlling the coal supply, I suppose that refers to the way they would dispose of the coal, the prices that they would charge?

Senator FLINT. No; it would be the acquisition of the property itself. I want to know what your idea is about the acquisition by private individuals of the property that is now in the possession of the Government; that is, those coal lands.

Mr. SMITH. I feel that the coal fields of Alaska, especially, should be allowed to be thrown open to entry under such terms as I have in mind in regard to sales that we have in the United States, selling them at a fair price, a price that is fair for development, but too high to permit holding for future speculative values, and I feel that that could be accomplished. I am not ready to outline just how the law should be framed, but it seems to me that it is possible to dispose of the public land even if corporations should get possession of some of those lands, and then control the corporations. But I suppose you have in mind also the leasing proposition. I am more favorably inclined toward the leasing in the United States than I am toward leasing in Alaska. As Mr. Brooks put it, it is largely a question of distance. I am not convinced that leasing is preferable to the present system.

Senator FLINT. There is no doubt in your mind that it would have been better for the Government if they had leased all the timber lands in the West, and had got so much per cord for it, is there?

Mr. SMITH. I am not convinced that public operation or leasing is necessarily a conservation measure. I can conceive conditions under which it would be anticonservation. Public operation, I think we all understand, might defeat the very purpose we have in mind, and a great deal has been done by private initiative and by corporate operation. I think the iron-ore situation, from the standpoint of conservation, is well handled from the fact that the steel corporation has such large holdings. I do not want to be understood as meaning that they should have to operate to control markets, but that is on the consumption side.

Mr. GRAHAM. Should that not enter into the conservation idea?

Mr. SMITH. Surely; but we do not want to lose sight of the idea that as producers the corporations are, in my mind, in many cases, the most efficient and the most conserving operators.

Mr. MADISON. Yes; but control of the iron ore and control of the production would, of course, give control of the market. One follows the other.

Mr. SMITH. Can not a corporation, which is a creature of the law, be controlled by legislation?

Mr. GRAHAM. Has it been?

Mr. SMITH. If I say no, I might be considered as criticising the lawmakers of the United States.

Mr. MADISON. Mr. Smith, it is seldom that anyone has gone so far as to advocate that the price at which a corporation shall put its product upon the market shall be fixed by the Government.

Mr. SMITH. Mr. Madison, if I may call your attention to the fact, the chairman of this committee, in offering to Congress some of the conservation measures, is advocating governmental control of the corporations that are to operate.

Mr. MADISON. Ah, but has anyone suggested that the Government shall enter into the domain of fixing the price at which a corporation should put its product on the market?

Mr. SMITH. Yes; I believe that is in the water-power bill that was presented by the chairman of this committee.

Mr. MADISON. That is another proposition, of course.

Mr. SMITH. That is a product.

Mr. MADISON. But here, where the Government owns the natural resources in the first instance, it may lay down certain conditions and restrictions as to parting with its title.

Mr. SMITH. Yes, sir.

Mr. MADISON. But in the case of the great steel corporation all those iron-ore beds have entered into private ownership, and all that sort of thing.

Mr. SMITH. We still have iron ores in the public-land States. I am sorry that the Senator from Utah is not present. He prides himself on the fact that they are present in his State and other western States, and there is a chance for the lawmakers to bring about the policy of conservation.

Mr. MADISON. Well, that would be a mighty difficult thing, I should think.

Mr. SMITH. I think it can be done in coal, and I think it can be done in phosphates.

Mr. MADISON. It certainly could not be done as to the iron and the steel markets. I do not know what may come to pass in this country, and it may be desirable to do it, but we will not take up that matter now. That is consuming too much of the time of the committee with something that is a little outside.

The CHAIRMAN. Mr. Vertrees, you may proceed.

Mr. VERTREES. Mr. Smith, I now hand you a bill prepared under the auspices of the office of the Secretary of the Interior and which has been introduced by Senator Nelson, providing for the disposal of coal and coal lands in the United States, and will ask you to read to the committee the fourteenth section.

Mr. SMITH. Section 14 is as follows:

SEC. 14. That leases or licenses executed or issued under the provisions of this act shall fix maximum prices or rates beyond which the lessee or licensee shall not charge the public for coal extracted under the lease or license and contain appropriate provisions for reentry or forfeiture in case of violation of such provisions; and such prices or rates may be graduated during the term of the lease or license.

Mr. VERTREES. You have been asked by the committee several questions with reference to selling and leasing, and you expressed your doubts as to the wisdom of the leasing system in Territories so far away as Alaska from the centers of administration. I will ask you to state to the committee what steps you have taken individually and personally to inform yourself with respect to those questions, and at your own expense.

Mr. SMITH. Under Secretary Garfield it came to my attention; all this matter was a live issue with some of the members of the Geological Survey and we wished to know more about the leasing system as practiced in Australia. I took the matter up with Secretary Garfield and asked if there was any way in which such an investigation could be made. I talked it over with Mr. Pinchot and Mr. Woodruff. We could not find any way in which that could be accomplished. There

were not funds available for sending an expert to Australia—I will withdraw that word expert; I will say geologist; that is the word that I have blue penciled in the service—sending a geologist to Australia to investigate the matter. Mr. Pinchot was more interested in the proposition than Mr. Garfield was, but it was one of the cases where Mr. Garfield was persuaded, and he approved a proposition to have one of the geologists of the survey assigned to the executive department, or to the White House, and under the orders of President Roosevelt, this geologist, Mr. Veatch, was sent to Australia to look into the practical operation and administration of the land laws there, and there being no appropriation available, this had to be done at the private expense of Mr. Veatch and myself.

Mr. VERTREES. And, as I understand you, you and Mr. Veatch bore the expenses of his trip to Australia to study this very question?

Mr. SMITH. Yes, sir.

Mr. VERTREES. Did he make a report to you?

Mr. SMITH. He made a report to the President. He was under the President in that case, being assigned to the executive department.

Mr. MADISON. But at your expense?

Mr. SMITH. That was the only way that it could be done, Mr. Madison.

Mr. PEPPER. Did Mr. Finney pass on the legality of that?

Mr. SMITH. Mr. Finney was in the Land Office and had no jurisdiction.

Mr. VERTREES. That was not an attempt on the part of the Forestry Service to get money out of the Treasury—they took it from you.

Mr. SMITH. It was done in the only way we could find, and it was done, as we believed, legally.

Mr. VERTREES. You and Mr. Beach did it in the public interest and at your own expense?

Mr. SMITH. Yes, sir.

Mr. VERTREES. Now, as a net result, you got a report?

Mr. SMITH. Several.

Mr. VERTREES. From an intelligent man who was sent to study the question?

Mr. SMITH. Yes, sir.

Mr. VERTREES. To what conclusion, after studying the result of his inquiries, did you come with respect to the matter of selling and leasing?

Mr. SMITH. I have not yet arrived at a conclusion in the matter. I will say for the information of the committee that I am not quite as enthusiastic about leasing as I was in the first instance.

Mr. MADISON. Has that report ever been published as a public document?

Mr. SMITH. I think that Representative Parsons has offered a resolution—I do not know about it except as I have seen such resolution. I do not know that the House has passed that resolution asking for this information. It is official property, of course.

Mr. McCALL. Can you not furnish this committee with a copy of that?

Mr. SMITH. Oh, there are several of them. The time was well spent in making quite detailed reports on the different States.

Mr. MADISON. But the report of this man who went to Australia?

Mr. SMITH. I mean that; there have been a number of reports. A few of the short reports have been published in the technical journals, but the whole report has not been published.

The CHAIRMAN. There are three or four provinces in Australia, are there not?

Mr. SMITH. Yes, sir.

The CHAIRMAN. Each with a separate system of leases?

Mr. SMITH. Yes, sir. One of the advantages of that research was that Mr. Veatch secured a good many ideas regarding administration of such questions, and those are bearing fruit in our land-classification work.

Mr. MADISON. Mr. Veatch was the man who went to Australia?

Mr. SMITH. Yes, sir.

Mr. MADISON. Was he not the same man who went to Mexico to investigate the oil situation?

Mr. SMITH. No, sir; that was Doctor Hayes.

Mr. VERTREES. Mr. Veatch is still in the service, is he not?

Mr. SMITH. Yes, sir.

Mr. MADISON. In this report how many pages of printed matter did it make, say comparatively the size of our record here?

Mr. SMITH. I will have that inserted in the record if the committee desires it.

Mr. MADISON. I just wanted to know the approximate number.

Mr. SMITH. It is in separate reports, and I have read them separately, but I would say that it might be a matter of seventy-five or a hundred pages.

The CHAIRMAN. In all the reports?

Mr. SMITH. Yes, sir.

The CHAIRMAN. Have you got it in printed form?

Mr. SMITH. We have them in typewritten form.

The CHAIRMAN. Could you furnish the committee with copies?

Mr. SMITH. Yes, sir.

The CHAIRMAN. If you can do so, the committee will have them printed as a part of this proceeding.

Mr. SMITH. I will say, too, that, of course, it may be a matter of a delay of a day or so.

Senator PURCELL. As a result of Mr. Veatch's trip to Australia, did he write articles for papers or magazines on the subject?

Mr. SMITH. They were forwarded to the White House, and then they came through the department back to my desk, and we had several suggestions regarding publication. They could not be published, to my understanding, under the Geological Survey; they have not been published, with the exception of one or two short articles that were furnished as free contributions to some of the technical journals.

Senator PURCELL. Was there any compensation for that?

Mr. SMITH. Not as I understand. I would say in that connection that we furnish a good many articles to the technical press; that is, scientific and technical press, in connection with our work.

Senator PURCELL. So that neither you nor Mr. Veatch has ever furnished this information that he secured in Australia for a consideration to any publication?

Mr. SMITH. Not to my knowledge.

Senator PURCELL. You would know if it had been done, would you not?

Mr. SMITH. I know that I have not received any compensation.

Mr. VERTREES. Or Mr. Veatch?

Mr. SMITH. If anything was done, it would be purely nominal, and I do not know that it was.

The CHAIRMAN. Proceed, Mr. Vertrees.

Mr. VERTREES. Now, Mr. Smith, to see how much we, of the present generation, should shiver lest posterity should freeze, I want to ask you something on the coal question. Are you able to give us some information as to the coal areas in the United States and in Alaska, and the like?

Mr. SMITH. I think Mr. Brooks's statements in the record are sufficient for Alaska. The Survey in May, 1908, published its second general report on the coal resources of the United States. This was continued. This report was supplemented and presented to the National Conservation Commission and published by them on the coal resources of the United States, and then, as I said, under Secretary Ballinger's authority, was republished as a bulletin of the Geological Survey. That has been quoted several times, and it deals with figures that are not easily comprehended.

Mr. VERTREES. Are you able to state that in reality there has been added through the investigations and labor of the Survey, large areas of the coal land in the United States that were not included in those estimates, and really not known—I mean added within the last six or twelve months?

Mr. SMITH. As a result of some of the field work last year, we received more information with regard to what is called the Black Mesa coal field in the Navaho Reservation in Arizona. This was known of in a general way, but had not been included in any of our reports or any of our estimates of the amount of coal available. Detailed surveys have not been made on this field, but from the information at hand we estimate the coal acreage there at about twenty-five hundred square miles; the tonnage at about 5,600,000,000 tons. Now, to put that so we can understand it, that is about equivalent to the amount of coal that has been exhausted in the coal exhaustion—not simply production, but the production plus waste—in the State of Pennsylvania—our largest producer and oldest producer. So that it also represents about half of the total exhaustion of the whole country since we began to mine coal, that new supply which is not included in the estimates which have been hitherto submitted or published.

Senator FLINT. What quality of coal is it?

Mr. SMITH. Of course, we do not know much about that. I suppose it is a subbituminous and bituminous coal.

Mr. VERTREES. Where do those areas lie, Mr. Smith?

Mr. SMITH. They lie up in the Navajo Reservation, in the northeastern corner of Arizona, east of the Grand Canyon.

Mr. VERTREES. Now, covering official action with reference to all of these matters I want to ask you is it not a fact that during the time that Secretary Garfield was Secretary, he supported the survey in its legitimate efforts and endeavors of true conservation in every way?

Mr. SMITH. Yes, sir; not only that but we largely developed the work of conservation, as far as that is done by the Geological Survey.

Mr. VERTREES. Now, I will ask you as to the course and policy of Secretary Ballinger.

Mr. SMITH. Secretary Ballinger has in every respect supported the Geological Survey in this work along the same lines—along the lines that were marked out by Secretary Garfield. He has gone rather further in the direction of coal, and he had intrusted to the Survey the water-power withdrawals.

Mr. VERTREES. What do you mean when you say he has gone further in the matter of coal?

Mr. SMITH. In the matter of coal which we took up with him early in his administration.

The CHAIRMAN. Mr. Smith, before you proceed to that, and in order that we may get it in consecutive order, will you state what the statute is about the price of coal within the United States, outside of Alaska, as preliminary to your statement?

Mr. SMITH. The coal-land law provides for a minimum price—

The CHAIRMAN. Of \$10 and \$20?

Mr. SMITH. Yes, sir; of \$10 and \$20, depending upon the distance from the railroad.

The CHAIRMAN. Yes; 15 miles. Within 15 miles of a railroad it is \$20 per acre, and a greater distance, \$10. That is the minimum price under the law.

Mr. SMITH. Yes, sir.

The CHAIRMAN. And the law remained; that is, in its practical operation. They adhered to that price until Secretary Garfield changed it?

Mr. SMITH. That price prevailed up until 1906. I am not sure but what some steps were taken toward the valuation of the coal land under Secretary Hitchcock's administration, but the first regulations for the classification and valuation of coal lands in the United States were issued under Secretary Garfield.

The CHAIRMAN. Now, if it does not interfere with you, Mr. Vertrees, I shall be glad to have him state in consecutive order the regulations that were made under Mr. Garfield in respect to the valuation and the change of the regulations that have been made, if any, since, with Secretary Ballinger.

Mr. VERTREES. Certainly, Mr. Chairman.

Mr. SMITH. If your secretary will return to me the copy of these regulations which I let him take I can speak on that subject. The regulations under Secretary Garfield provided for—

The CHAIRMAN. I want to say here, before he goes on, that if it interferes with you, Mr. Vertrees, I will withhold the question until some other time.

Mr. VERTREES. No, sir; it is just as good now as at any other time.

Mr. SMITH. They were based primarily upon distance, as that principle was set down in the law—distance from the railroad—and then also upon the quality or grade of coal, and then upon the number of beds. The regulations approved by Secretary Garfield—that is, his approval—bears date April 8, 1907, and that is the basis of the classification valuation.

The CHAIRMAN. Under those regulations, what was the maximum and minimum price of the coal?

Mr. SMITH. Of course the minimum was fixed by law. The maximum was \$100 for the higher grades, \$75 for the next, \$50, and then

the lowest grade at the maximum and the minimum were the same.

The CHAIRMAN. Fifty dollars and \$100?

Mr. SMITH. One hundred dollars for the highest grade, \$75 for the next, and \$50 for the next grade, and the lowest grades were valued at minimum prices.

The CHAIRMAN. That was the rate applied under his rule?

Mr. SMITH. That was under Secretary Garfield. There were some modifications or amendments of those regulations under Secretary Garfield, but the principle remained the same. They were modifications in detail.

The CHAIRMAN. Now, what changes, if any, were made under Secretary Ballinger, and what has been the effect of those changes?

Mr. SMITH. I will take the matter under Secretary Ballinger on a different basis, this matter being the result of a number of conferences of our geologist, who knew the coals and the fields. We divided the coals into four classes, as before, made some slight modifications as to the divisions, and we increased, in the classification of coal-lands, the depth to which a bed of coal could go, and still the land would remain as coal land, and we increased that maximum depth from 1,500 feet to 3,000 feet.

The CHAIRMAN. Did you make any change in the maximum price?

Mr. SMITH. Just before that, Senator, we made a basal change, in that we put the valuation primarily on tonnage estimate. Before, we had put it upon the number of beds. The thickness of the beds did not enter to any great extent into the estimate. We now bring in the thickness as expressed in tonnage, and at the present time the valuation price is directly connected with the estimated tonnage of the land. In simple cases one of our board can tell you how thick the coal was on a given 40 by knowing the quality of that coal and the valuation price.

The CHAIRMAN. Have you put any tonnage valuation on it?

Mr. SMITH. We estimate the tonnage—the price per ton, and that gives us—

The CHAIRMAN. Have you any maximum and minimum price?

Mr. SMITH. The maximum was changed to \$300 instead of \$100.

Mr. JAMES. By whom?

Mr. SMITH. By Secretary Garfield.

The CHAIRMAN. It was changed from \$100 to \$300?

Mr. SMITH. Yes, sir; and that was not the only maximum. As I said, as you may remember, in my letter explaining this to Mr. Garfield, that the maximum did not hold in cases where the government lands were so close to operated mines that the purchaser as well as the Government would know, or could judge, very closely as to the thickness and the character of the coal. In that case there is no maximum; we go as far as the price takes us.

Senator FLETCHER. I understand that your advice is to extend the laws and regulations to Alaska.

Mr. SMITH. That might be done in Alaska; I think it should be done if the Alaska coal lands are to be sold, and that is the spirit in which I believe Mr. Brooks testified to the committee.

Senator FLETCHER. You would want to carry the same valuation, would you?

Mr. SMITH. I would hardly think it was advisable to put the same price on some coal up there in Alaska that I would for exactly the same coal right near the Union Pacific in Wyoming.

The CHAIRMAN. What is the unit of your estimate?

Mr. SMITH. We put a price per acre on every 40-acre tract. We take the smallest legal subdivision as the unit for valuation.

Mr. VERTREES. Have you any documents or maps which will explain to the committee just how you do that?

Mr. SMITH. I can show the committee just the form in which our reports are submitted to the land office; the land office, of course, attending to the disposition of the lands and we attending to the classification and valuations under these arrangements. I have here one case taken in Utah where the same tract of land has been classified under the Garfield regulation and under the Ballinger regulation. Under the Ballinger regulation we find more coal land. That, of course, is due to the difference in definition of what is coal land for the purpose of classification, and we, of course, put upon it a larger price. The maximum price for this particular tract was \$50; in fact, the larger part of the area was classified as \$50. The value of the same areas in the two valuations was \$407,000 under the Garfield regulation, and \$1,315,000 under the Ballinger regulation. The maximum price, as it happened in that particular tract, under the Ballinger regulation, is \$250 as against—

The CHAIRMAN. Per acre?

Mr. SMITH. Per acre; as against \$50 under the Garfield regulation.

Senator FLINT. Were there any transactions in that matter, or are those just estimates? Have you made any disposal of the land?

Mr. SMITH. I will answer that, if you will allow me, a little bit later. I had some extra copies of these—these being photographs of originals from our file [producing charts].

Mr. VERTREES. I would like, Mr. Chairman, to have one of these go into the record as an illustration of the way the Geological Survey does it.

The CHAIRMAN. Very well; you may put in one that is typical of the rest.

(The chart referred to will appear in the proceedings of the next meeting of the committee.)

Mr. SMITH. Of course, there are lands that are some distance from the railroad that were classified at the minimum price, or very near the minimum price—such, for example, in Wyoming, and another case in Utah, that shows that we get rather higher-priced coal in Utah, running up to \$300 per acre, and this is one of the cases where the valuable coal can be seen at a glance by the distribution of these coal prices. We do exceed the maximum. I will take up a case in Wyoming, where we have indicated on our plat a price of \$465 per acre. Now, that is fairly high-grade coal, and I suppose that price will be criticised, as it has been criticised already, as excessive. It is coal that we figured at 2 cents a ton, but there is so much of it that the discounts are provided for in the regulations for excessive beds.

The CHAIRMAN. That is based on 2 cents a ton?

Mr. SMITH. It starts on that basis, and there are 86 feet of coal on that land; so applying those discounts as they ought to be applied in a case where there is so much coal, because it is more expensive mining—they are thick beds, and the mining of one bed may interfere with the mining of another—this price of \$465 represents only a little over one-half a cent a ton on the estimated tonnage of 86,000 tons per acre. As a matter of fact, we are embarrassed; our operations are criticised by some as too high and by some as too low. Now, on that account Secretary Ballinger, when he approved my recommendation

with regard to this, made the suggestion that we should be sure of our ground in this matter. He agreed with the proposition, and he looked to me to show that we were right, and on that account I had an investigation made and a report prepared, and that was published as a bulletin of the survey on the valuation of public coal lands.

The CHAIRMAN. Have you a copy of the bulletin here?

Mr. GRAHAM. Mr. Chairman, if you will pardon me? Mr. Smith, how do you differentiate between adjoining acres, one marked 465 and an adjoining one marked 435?

Mr. SMITH. Those are adjoining forties, 40-acre tracts being the smallest legal subdivision.

Mr. GRAHAM. How do you differentiate on tracts close together?

Mr. SMITH. There may be increasing depths and we graduate it. Of course, you will understand that at one end of a township it may be different from what it is at the other, and of course we graduate that all the way.

Mr. GRAHAM. What I mean is how you ascertain the difference?

Mr. SMITH. The lower-priced lands, if there is a big difference, probably lacks one bed that may be exposed on the higher price. It may be also true that the lower price is deeper on the dip, and the change is based on physical conditions as determined by actual field surveys. Of course, it is true that in some of our fields there is a change in the quality, but that rarely comes into the valuation. The bulletin to which I refer is No. 424, on the valuation of public coal lands. That was printed this winter and is already out of stock.

The CHAIRMAN. If there is no objection, that will be printed as a part of the record.

Mr. SMITH. There are 75 pages. The plates are at the Printing Office. That ought to be taken into account by the Secretary.

The bulletin referred to is as follows:

THE VALUE OF COAL LAND.

[By GEORGE H. ASHLEY]

INTRODUCTION.

LAWS RELATING TO THE SALE OF COAL LANDS.

The laws of the United States relating to the sale of coal lands, as contained in the Revised Statutes, read as follows:

"Sec. 2347. Every person above the age of twenty-one years, who is a citizen of the United States, or who has declared his intention to become such, or any association of persons severally qualified as above, shall, upon application to the register of the proper land office, have the right to enter, by legal subdivisions, any quantity of vacant coal lands of the United States not otherwise appropriated or reserved by competent authority not exceeding one hundred and sixty acres to such individual person, or three hundred and twenty acres to such association, upon payment to the receiver of not less than ten dollars per acre for such lands where the same shall be situated more than fifteen miles from any completed railroad, and not less than twenty dollars per acre for such lands as shall be within fifteen miles of such road.

"Sec. 2348. Any person or association of persons severally qualified, as above provided, who have opened and improved, or shall hereafter open and improve, any coal mine or mines upon the public lands, and shall be in actual possession of the same, shall be entitled to a preference right of entry, under the preceding section, of the mines so opened and improved: *Provided*, That when any association of not less than four persons, severally qualified as above provided, shall have expended not less than five thousand dollars in working and improving any such mine or mines, such association may enter not exceeding six hundred and forty acres, including such mining improvements.

"SEC. 2349. All claims under the preceding section must be presented to the register of the proper land district within sixty days after the date of actual possession and the commencement of improvements on the land, by the filing of a declaratory statement therefor; but when the township plat is not on file at the date of such improvement, filing must be made within sixty days from the receipt of such plat at the district office; and where the improvements shall have been made prior to the expiration of three months from the third day of March, eighteen hundred and seventy-three, sixty days from the expiration of such three months shall be allowed for the filing of a declaratory statement, and no sale under the provisions of this section shall be allowed until the expiration of six months from the third day of March, eighteen hundred and seventy-three.

"SEC. 2350. The three preceding sections shall be held to authorize only one entry by the same person or association of persons; and no association of persons any member of which shall have taken the benefit of such sections, either as an individual or as a member of any other association, shall enter or hold any other lands under the provisions thereof; and no member of any association which shall have taken the benefit of such sections shall enter or hold any other lands under their provisions; and all persons claiming under section twenty-three hundred and forty-eight shall be required to prove their respective rights and pay for the lands filed upon within one year from the time prescribed for filing their respective claims; and upon failure to file the proper notice, or pay for the land within the required period, the same shall be subject to entry by any other qualified applicant.

"SEC. 2351. In case of conflicting claims upon coal lands where the improvements shall be commenced after the third day of March, eighteen hundred and seventy-three, priority of possession and improvement, followed by proper filing and continued good faith, shall determine the preference right to purchase. And also where improvements have already been made prior to the third day of March, eighteen hundred and seventy-three, division of the land claimed may be made by legal subdivisions, to include, as near as may be, the valuable improvements of the respective parties. The Commissioner of the General Land Office is authorized to issue all needful rules and regulations for carrying into effect the provisions of this and the four preceding sections.

"SEC. 2352. Nothing in the five preceding sections shall be construed to destroy or impair any rights which may have attached prior to the third day of March, eighteen hundred and seventy-three, or to authorize the sale of lands valuable for mines of gold, silver, or copper."

AREAS OF COAL LANDS CLASSIFIED.

Prior to July, 1906, it was the practice to dispose of coal lands at the minimum prices fixed by the law, viz, \$20 per acre for lands within 15 miles of a completed railroad and \$10 per acre for lands beyond the 15-mile limit. Since that date lands which have been classified and valued have been disposed of at fixed prices based upon the value of the coal contained in the land. July 26, 1906, large areas known or supposed to contain coal were withdrawn from entry, and this withdrawal was followed by others. At the same time the Geological Survey began an appraisement of these withdrawn lands, which were returned to entry as rapidly as they were classified and appraised. The following table shows approximately the areas withdrawn for classification and those classified and restored on November 1, 1909:

Areas withdrawn for classification and classified and restored, in acres.

State.	Withdrawn from coal entry pending examination and classification.	Withdrawn from all entry pending classification—field work completed.	Classified and restored November 1, 1909.
Wyoming.....	5,475,990	6,056,656	10,206,403
Washington.....	2,291,320		612,440
Utah.....	4,638,080	207,360	1,728,000
Oregon.....	386,561		885,120
Montana.....	9,296,360	1,062,880	8,073,000
New Mexico.....	3,283,420	864,000	5,122,740
Colorado.....	5,856,320	3,651,680	4,753,150
South Dakota.....			2,169,917
North Dakota.....	645,120		2,260,000
Total.....	31,872,171	11,862,576	35,913,253

At the time this policy was established the Geological Survey had examined only a very small part of the coal fields in the public-land States. From that time, however, the examination of coal lands was rapidly extended and the work of classification and valuation was increased until it became necessary, in order to unify and correlate the work, to create a board of three members, who should prepare or revise all of the classifications made.

One of the first acts of this board was to collect additional data on the value and workability of coals and to review carefully the former basis of classification. As a result of this review, recommendations for a new and somewhat more definite basis of classification and valuation were presented to the Secretary of the Interior and resulted in the "Regulations on the classification and valuation of coal lands," approved by the Secretary of the Interior April 10, 1909. Under these new regulations classifications have been made as follows, from April 10 to October 31:

	Acres.
Classified as coal land.....	2,533,562
Classified as noncoal land.....	10,291,822
Restored without classification.....	493,003
Total acted on.....	13,318,387
Sale price of coal land as fixed.....	\$141,890,576
Sale price of same coal land at minimum would be.....	47,080,040
Gain in seven months (Apr. 10 to Oct. 1).....	94,810,536

OBJECT OF PRESENT PAPER.

The object of this paper is to present briefly some of the facts on which the department's regulations for classifying and valuing coal lands are based. The information already at hand in the survey has been supplemented by data obtained in the fall of 1909 by the writer in Colorado, Wyoming, and Utah, concerning the values of coal lands in those States.^a In dealing with the financial side of the question it has been necessary or desirable to group some of the data and to omit names of authorities. It is not pretended that the discussion is exhaustive or complete, but it is believed that the facts selected are representative and that the conclusions based upon them would be confirmed rather than upset by the presentation of additional information.

The data are not evenly distributed or of equal value, being meager as to some districts and very full as to others.

ROYALTY VALUE OF COAL LAND.

SOURCE OF VALUE OF COAL LAND.

Coal land derives its value from the coal that underlies it, and the value of coal, like that of every other commodity, is in a broad way determined by the supply and demand, which fix the sale price of coal in open market. On the one hand is the seller, demanding a price that will pay him for the expense of mining, preparing, and transporting the coal, and leave him a satisfactory profit; on the other hand is the buyer, seeking the cheapest market and willing to pay only such price as will yield him a satisfactory return either in comfort or in financial benefit for service rendered or manufactured goods prepared.

Coal is a commodity for which the supply and demand are both large and widespread, and active competition among both sellers and buyers tends to produce a more or less stable balance, the selling price differing from place to place chiefly because of difference in the cost of transportation. As transportation facilities improve and multiply, this stable balance comes into more nearly perfect equilibrium from point to point, except as it may be temporarily affected by widespread strikes, car shortage, or general changes in economic conditions.

^a The writer, who is a member of the survey's land-classification board, has for many years given special attention to the economics of coal. One of his earliest reports on this subject, bearing the title "The finances of coal," was published in 1899 (Twenty-third Ann. Rept. Indiana Dept. Geology and Natural Resources, pp. 1490-1517).

PRICES OF COAL.

The selling price of coal may be taken at the mine, as it is with large contracts, or it may be determined by subtracting transportation and storage charges and losses and middlemen's profits from the sale price at the point of consumption, the result being the sale price at the mine. For the sake of uniformity the sale price may be assumed to be always f. o. b. at the mine.

In a purely theoretical study it might be possible to estimate the value of the coal in the ground by computing its heat-giving value, either actual or potential, as applied to serve human need and demand, and the total available supply. As this paper is, however, a study of actual conditions and of the value of coal under those conditions, the study must start from the sale price at the mine.

The sale price of coal at the mine may be divided roughly into three elements:

1. Cost of coal in ground.
2. Cost of removing from ground and preparing for market.
3. Profit.

The cost of the coal in the ground appears in one of two ways, either in the purchase of all of the beds or of a single bed of coal below a given number of acres of the surface, with or without the surface itself, or by purchase of the coal ton by ton as it is mined, under a leasehold contract with the owner.

The cost of removing the coal from the ground and preparing it includes all the costs of equipment, labor, materials, interest, marketing, amortization (or the laying aside of a fund for the replacement of the plant when worn out), and a fund to meet accidents and contingencies. These costs make up a more or less nearly definite figure or "fixed charge" for any locality, which is subject to change with change of conditions, but in general forms an item of expense that must be met if operations are to continue.

The profit, if any, is the difference between the cost stated above and the price the seller may be able to obtain for his coal.

The purchase of the coal in the ground for mining at some future time usually involves the cost of carrying the coal—in interest and taxes—to the time of mining, allowances for uncertainties as to the amount and quality of coal underlying the acreage purchased, and many other unknown factors. On the other hand, payment for the coal ton by ton as it is brought out of the ground eliminates these elements of uncertainty. It has, therefore, been uniformly recognized that the royalty rate at which coal is paid for per ton at any chosen place is the truest measure of what it is there worth commercially in the ground.

Here, again, supply and demand, in a broad way, determine the royalty rate. Where, as in the Illinois coal field, a score of million acres of coal land are awaiting development and the present demand is exhausting only a few thousand acres a year, the owner of the coal may be willing to part with it for almost nothing rather than to see it lie and yield him nothing at all. Under these conditions he may lease the coal for a price as low as 2 cents a ton. On the other hand, where the supply is small and the demand great, as in the Connellsville coking field of Pennsylvania, the anthracite field of Pennsylvania, or in some fields in the West, the royalty may be from 40 cents to \$1 a ton. The price last mentioned is local. In a general way, in the bituminous coal fields outside of the Connellsville coking field royalties on large contracts range from 5 cents to 15 cents, the average being not far from 10 cents a ton.

ROYALTIES NOW PAID.

The following table shows the royalties now paid in many eastern and western coal fields. The table gives the royalty in cents; the minimum yearly royalty, where that is at hand; and the bonus on the lease, where such bonus is paid. Although the figures may be lacking for some districts, a minimum royalty is practically everywhere exacted. A bonus is, however, paid less frequently. A minimum royalty is fixed to encourage production up to at least a certain amount, with the penalty of having to pay for that amount whether it is produced or not; and as the courts have declared that such a minimum royalty is payable each year, it serves to encourage continuous operation. The bonus is a cash payment, and as a rule is exacted only where conditions are especially favorable. Under a lease on developed property the bonus may cover the cost of improvement; otherwise the bonus must be considered as so much addition to the royalty. Under some leases the bonus is rated at so many cents a ton; it is then simply an addition to the royalty. Under other leases it is a cash payment, demanded when the lease is made, and becomes a diminishing charge per ton against the coal as the output increases.

Royalties paid in some coal districts of the United States.

Locality.	Royalty, in cents.	Minimum yearly royalty.	Bonus on lease.
Pennsylvania:			
Anthracite fields.....	Up to 80		
Clearfield district.....	8-15	\$1,000 per 100 acres....	None.
Connellsville district—			
Coal.....	16-20		
Coke.....	24-30		
Pittsburg district.....	10-15		
Ohio:			
Masonville district.....	a 10-15		1 to 8 cents per ton.
Hocking Valley district.....	8		
West Virginia:			
Fairmont district.....	6	\$800 to \$300,000.....	None.
Pocahontas district—			
Coal.....	10-15	\$12.50 an acre to \$45,000	\$25 an acre to \$200,000.
Coke.....	15-24		
Kanawha district.....	54-10	\$10 an acre to \$20,000..	\$25 an acre.
New River district.....	10	\$10 an acre.....	Do.
Kentucky:			
Northeastern Kentucky district.....	8-12	\$300 to \$500.....	None.
Southeastern Kentucky district.....	10-11		
Western Kentucky district.....	3		\$100 to \$500 a year.
Tennessee:			
Jalisco district.....	10		None.
Alabama:			
Walker County district.....	7-10	Amount equivalent to taxes on land.	
Jefferson County district.....	7-12½	\$100.....	
Indiana:			
Vigo County district.....	3		
Greene County district.....	a 4-10	\$100 to \$200.....	None.
Evansville district.....	2-3½		
Illinois:			
La Salle district.....	a 10-25		\$15 to \$50 an acre.
North Illinois district.....	5		
South Illinois district.....	2		
Arkansas:			
.....	3		
Oklahoma:			
.....	8		
Colorado:			
State lands.....	10	\$100 to \$500 (?).....	
Boulder County district.....	8-27½		
Trinidad district.....	8-12½	Up to \$20,000.....	
Routt County district.....	8-10		
Wyoming:			
Wyoming State lands.....	3-6		
Southwestern Wyoming.....	10		
Small local mines.....	Up to 100		
Indian reservations.....	8-10		
Utah:			
Small mines.....	Up to 75		
Montana:			
Miles City district.....	15		
Roundup district.....	15		

a Royalty computed on screened coal; in other districts royalty is computed on run-of-mine coal.

The foregoing table has been compiled partly by correspondence with officers of some of the largest coal companies in the districts named, partly by personal inquiry and partly from published reports on new leases at the time they were made.

The data are not complete, even for the districts cited. Some of the figures are based on general statements of representative operators as to the conditions in the field; others are based on royalties paid by one or more mining companies. Each royalty is computed on mine-run coal, except those marked a, whose basis is screened coal.

In fixing the rate no account is generally taken of differences in the thickness and quality of the coal. Thus, in Colorado, the royalties charged in the Trinidad field for high-grade coking coal are not observably different from those paid in the Boulder field for relatively low-grade subbituminous coal, or "black lignite." The Boulder County field, however, by its proximity to Denver, has an advantage that offsets the lower grade of the coal. Nevertheless, it remains true that, except perhaps in the Connellsville coking coal and Pocahontas coal fields, little or no correspondence can be found between the royalty rates and the quality of the coal. In eastern Kentucky, it is said, the rate is affected by the thickness of the bed. Thus, beds running

from 3 to 4 feet pay 8 cents; from 4 to 5 feet, 10 cents; from 5 to 6 feet, 12 cents. In Wyoming the rate charged for coal mined on state lands depends on the amount of coal mined yearly, being 6 cents a ton for all coal mined and sold up to 25,000 tons, 5 cents a ton between 25,000 and 50,000 tons, 4 cents a ton between 50,000 and 100,000 tons, and 3 cents a ton on over 100,000 tons. In Colorado the state lands containing coal are leased on a straight 10-cent royalty.

As will be seen from the table, royalties in the eastern interior coal fields of Illinois, Indiana, and western Kentucky are extremely low. The coal beds are regular and abundant and so widespread that nearly every farm in an area of 40,000 to 50,000 square miles is underlain by workable coal. Under these conditions, with a network of railroads running everywhere, the prospective operator has an almost unlimited field from which to choose and may practically dictate his own terms. On the other hand, in local areas in parts of the West, competition is lacking or restricted, so that the operator has practically a free hand as to the price he may ask for his coal in the market; he can pay whatever royalty is demanded by the owner of the coal and still get a good profit, even though, as sometimes happens under these conditions, he pay a royalty of from 25 cents to \$1 a ton. As a rule, mines in such areas are not commercial mines in the usual sense, although some of them that are near towns may yield a considerable output. Under special conditions a few large commercial mines have paid a royalty as high as 27½ cents a ton.

The Appalachian coal field is favorably situated as to markets, much of the coal is of high grade, and the coal land has been in large measure absorbed by mining companies; but because of the rugged topography of the country, railroad construction has been slow, and a relatively small part of the area is accessible for immediate mining. Furthermore, the coal in different parts of the field differs greatly in quality, particularly when considered with reference to its adaptability to special uses, such as coking. Accordingly, there is in this field a better balance between the buyer and the seller of coal lands, and much higher royalties are paid here than farther west in the Mississippi Valley.

Royalties paid in the East show a decided tendency to advance. Thus, in the Pocahontas district of West Virginia the royalty has long been 10 cents a ton for coal and 15 cents a ton for coke. Recent leases, however, call for a royalty of at least 15 cents a ton on coal and 24 cents a ton on coke, with a large cash bonus and a high minimum royalty. In Alabama ten years or more ago royalties were 5 cents a ton; to-day they range from 7 to 12½ cents, with a strong tendency toward the higher figure. The advance is seen also in the widespread change in the mode of measurement—from lump coal to mine run—without change or corresponding decrease in the royalty. Formerly nearly all of the royalties paid in Colorado were computed on screened coal; to-day royalties, with few exceptions, are computed on mine-run coal. In general it will be found that where the figures given in the table show a range in royalty the contracts recently made give the higher rate. This tendency of the royalty to rise is seen in still another way—in the frequent requirement of a bonus, which may be only the entering wedge for an increase in the royalty. As conditions change so as to favor the lessor he is in a position to demand better terms for a lease. Where the royalty rate has been long established it may be difficult to raise it, so that an easier method of getting higher prices is to ask a bonus. This bonus may be increased until the lessee finds it to his advantage to ask for a higher royalty without the bonus. If this device is kept in view, the fact will be recognized that where a bonus is asked, as shown in the table on page 10, the royalty should be assumed to be a little higher than that given under the heading "Royalty."

ROYALTIES AND LAND PRICES.

What will an acre of coal land yield on a royalty? A bed of bituminous coal 1 acre in extent and 1 foot thick contains approximately 1,750 tons of coal. Under the best conditions of mining it should yield over 1,500 net tons. As a rule mining will not recover over 1,300 tons, and under some conditions mining does not actually net over 1,000 tons per acre-foot. Under the best conditions an acre of coal 1 foot thick will yield, at a royalty rate of 10 cents a ton, \$150 gross; under the worst conditions it will yield \$100. If the last figure be taken, an acre of bituminous coal 5 feet thick should yield \$500 gross income; an acre containing a 10-foot bed or two 5-foot beds should yield \$1,000. At 20 cents a ton the gross income from royalty would be twice those figures.

Royalties in the Connellsville coking district are quoted at from 16 to 20 cents. The Pittsburgh bed there averages about 7 feet thick, and at 20 cents a ton the land in this district should yield in gross royalties from \$1,400 to \$2,100 an acre. It is of interest to note in this connection that \$1,700 to \$2,000 an acre has recently been paid

in this field for coal lands. Some of these lands will not be mined out for twenty years to come, and the average duration of many contracts is ten years or more. The compound interest on \$1,700 at 5 per cent for ten years, with taxes at \$1.50 per \$100, would bring the cost of the land at the time it is worked out to more than \$3,000 an acre, or about double the gross income from royalties at the rate quoted. It must be at once evident that no leases are being made to-day at these rates—the rates quoted are for old contracts or for existing contracts made years ago. They are of interest, however, as illustrating the possibility that the actual sale price of coal land may be more than the gross royalty value under existing contracts.

Selling prices of coal land that are equivalent to the royalty value are rare, though under exceptional conditions they are sometimes found. For example, a coal company in Colorado had mined up to a certain 40 acres, and the coal in the area mined out had run very regularly 5 feet thick. Computed on a net recovery of 1,000 tons per acre at 10 cents a ton this 40 acres had a royalty value of \$100 per acre-foot, or \$500 per acre, and it is reported that the land was purchased at that price. It was evident that the time for mining out the coal purchased would be small, so that interest charges would amount to but little.

In general, however, the sale price of coal land must necessarily be less than the gross royalty income that the same land would bring at the prevailing royalties. In the first place, the net royalty income derived by the lessor may be quite different from the gross income. There is the cost of collection, and possibly of inspection, which may amount to 5 to 10 per cent or more of the gross income. In the second place, the operator who buys his coal land rather than leases it must pay interest and taxes on it from the time of the purchase until the coal has been mined out. These should be computed on the average length of time each acre is carried. If mining is started immediately after purchase and is continued regularly for twenty years, the average time of carrying the coal will be ten years. The first cost of the land may be increased one-half to three times or more, the increase depending on the rate of interest, so that a tract of land bought for \$100 an acre may have actually cost \$150 to \$300 or more an acre by the time the coal is mined. In other words, an acre of land that, when mined ten years hence, would yield \$500 in royalties would be worth to-day, if interest is 5 per cent and taxes are left out of account, \$314; with interest at 7 per cent it would be worth to-day \$253; at 10 per cent only \$108. Taxes would still further decrease these amounts. If twenty years be taken as the life of the average active mine, the first acre of coal will be mined out the first year, the last acre the twentieth year, and the average acre in ten years. On a tract of land, therefore, that, it is confidently estimated, will be mined out within twenty years the purchase value can hardly be more than one-half the estimated royalty value. If that value be again cut in half on the possibility that the estimated tonnage may be too large, the buyer is made doubly secure; and a still further reduction from one-fourth to one-fifth the estimated royalty value, such as is made on the highest government valuations, is just that much more in favor of the buyer.

It may therefore be confidently said that where the conditions are favorable to the almost immediate development of a piece of coal land, its purchase value may be estimated at from one-fifth to one-half its estimated royalty value. The estimated royalty value may differ from the actual royalty value by as much as the estimated amount of coal in the land differs from the actual amount. Exceptionally the estimate may be larger than the actual value, but as a rule, since the estimate must be made on only a part of the facts, it will fall below the real value.

FAIRNESS OF GOVERNMENT PRICES.

The prices now being placed on the government coal lands, as explained on pages 37-45, represent one-fifth of the computed royalty value, an ultra-conservative estimate which in turn is based on a conservative estimate that only 1,000 tons per acre-foot of the coal computed to be in the ground can be recovered. This estimate applies only to lands containing but a single workable coal bed. For lands containing more than one coal bed a reduction in price is made on the additional beds. Thus, the price of the second bed may be only one-eighth of its estimated royalty value; that of the third bed only one-twelfth; and the prices of all other beds may be estimated at only one-sixteenth of the royalty value, to allow for the delay that must usually ensue before the second, third, and other less valuable beds are worked. In general, the government price for lands containing several beds will average not far from one-tenth of the estimated royalty value.

Moreover, this relation of the government prices to the estimated royalty value is maintained only as to the high-grade, noncoking bituminous coals; for coals of lower grade the minimum price is only one-fortieth of the royalty value, as determined by the royalties now charged for low-grade coals in the same general region. Royalties

in the West tend to remain uniform, regardless of the variety of the coal (anthracite possibly excepted), but the government prices are scaled down rapidly as the grade of the coal becomes lower, partly to encourage the mining of the lower-grade coals, partly because of their lower calorific value and their greater tendency to break down on weathering.

The private owner of coal lands must consider his ownership as an investment, and the interest on that investment must be charged against the value of the land. It is therefore an even thing to him whether he sell the land at its present value as determined by the royalty or hold it and realize on the royalties when the coal is mined. The rate of interest to be paid for carrying the land is assumed to be the same whether the interest is paid by the purchaser or the lessor. In the government prices the rate of interest computed has been liberal, averaging as high as 7 per cent, with an average time of recovery of the coal of ten years, equal to a total length of life of the mine of twenty years. As the Government is paying only 3 per cent for money, it is giving the purchaser the benefit of the difference. Still more important, as the estimated royalty value is always based on partial information, the purchaser always getting the benefit of the doubt, the government price, plus interest at 3 per cent, may be only a small fraction of the actual royalty value, the difference, less the cost of collecting and inspection, being the Government's loss. The government estimates for the coal in some districts may be too high—even so high as to overbalance the difference between the selling price and the royalty value. An intimate knowledge of government valuations placed on coal lands, however, convinces the writer that overvaluations will be few. Their possible existence is only another argument for the fairness of the lease system as contrasted with the practice of selling the coal land.

FACTORS AFFECTING THE SALE PRICE OF COAL LAND.

GENERAL NATURE OF THE FACTORS.

Among the factors affecting the price of coal land are the character and amount of the coal, competition, knowledge of coal content, accessibility, cost of mining and marketing, demand, and artificial and legal restrictions. Each of these factors in turn is composed of many elements. Their effect on the price of coal lands varies greatly with time, place, and circumstance, as may be seen by examining the selling prices of coal lands at various times and places as recorded, for example, in the mining journals. Thus the same company operating over a wide territory may on the same day buy land equally rich in coal for 50 cents an acre in one place and for \$500 an acre in another. Lands containing coals of the highest grade may have little or no present market value if they are entirely inaccessible or if some element of cost prohibits mining, such as the increase of cost due to the absence of water. At some time in the future the lands may be made accessible by the building of a railroad, or the element prohibiting profitable mining may be overcome, when the lands at once acquire full normal value as determined by the other factors. It may be that the overcoming of the nullifying factors places no burden on the land, as is the case when a railroad is built by disinterested parties.

It may be well to illustrate briefly the effect of some of these factors on the present market price of coal.

QUALITY OR CHARACTER OF COAL.

Other things being equal, the sale price of coal should be directly proportional to its quality and character. But in the first place, quality and character differ along several lines and have different values as the coal is applied to different uses, so that it is not possible to arrange all coals in a column in the order of their quality and character. And in the second place, the cost of different coals is so nearly equal that either a high-grade coal must sell at a large profit in order that a low-grade coal may bring any profit, or, as is generally the case, the high-grade coal must sell at only a reasonable or a small profit and the low-grade coal must remain in the ground because it can not be profitably sold.

Until recently it has been the general rule that all of the coals entering a single market were treated as of one grade, or, for larger markets, as of four or five grades. Thus all southern Illinois coals in the Chicago market would be regarded as a single class and sold at the same rate. But with the increasing use of the B. t. u. method of selling coal—that is, the sale of coal at prices determined by the number of British thermal units of heat it will yield—it has become necessary to discriminate between coals procured from different mines of the same company and between coal from di-

ferent parts of the same mine, and slight differences of quality may make differences in demand and price. This mode of rating the value of coal naturally affects the price of coal lands. Areas which produce coal that is up to required standards are enhanced in value, and neighboring areas which formerly competed with them on even terms, but whose coal falls a little below that standard, are depressed in value. The increasing discrimination of coal buyers will tend to increase the difference in price that is due to slight difference of quality. This discrimination will work to the advantage of the higher-grade coals and to the disadvantage of the lower-grade coals, cutting down the sales and profits on the latter and making it necessary for operators on coals of low grade to seek new markets or new uses, or to be satisfied with smaller profits or to stop mining.

When, in place of the slight differences between coals from neighboring mines, the buyer considers the greater differences between coals from different parts of the same field, or from different fields, or the difference in value between coals of entirely distinct classes, the effect on prices will be still more marked if the competing coals have to pay equal transportation charges. Fortunately, however, for the lower-grade coals, they can frequently find a local market where the advantage in the freight rates over the higher-grade coals allows them to compete with profit. In this case the price of the land is not affected by a difference in the quality of the coal, for the difference is balanced by an opposite difference in transportation charges.

The differences in coal include not only differences in calorific value, as measured in British thermal units, but differences in the amount of impurities, in hardness, in liability to weathering, and in other features. Every factor that affects the coal's transportability or that requires the use and handling of a larger amount of fuel, such as the handling of waste, affects its price in the market and, unless offset by some advantages, tends to lower the value of the land from which the coal came.

The variations in the price of coal lands produced by slight differences in the character of the coal they contain are well illustrated in the Pittsburg field of southwestern Pennsylvania. In a small part of that field the coal from the Pittsburg bed will produce a high-grade coke that is of great value in the metallurgy of iron. Adjoining parts of the same bed, by reason of the presence in the coal of 1 or 2 per cent more of sulphur or for other causes, will not produce coke of so high grade. The land containing the coal that will produce the high-grade coke may sell for \$1,500 to \$2,000 per acre. Adjacent lands that contain coal which will not produce such coke, though the coal is equally thick, may sell for only \$50 to \$150 per acre. A comparison of the selling prices of anthracite and bituminous coal lands may show still greater differences.

Now, suppose that a cheap process be discovered for satisfactorily removing the sulphur of the sulphurous Pittsburg coal or of otherwise rendering it capable of producing a high-grade coke; instantly the value of the land containing such coal will increase, though not perhaps to the former value of the land containing the regular coking coal, for the increase in the supply would probably produce a slump in the price of that coal.

In a district that is fully supplied with a high-grade coal a coal of slightly lower grade may not find a market or may not be mined at a profit, for the lower-grade coal will sell only at a lower rate, and if, as is often the case, it costs as much to mine the low-grade coal as the other, the margin of profit may be too small to allow any cutting in price. In such a district the lands containing coal of lower grade have little or no market value.

The partial exhaustion of the higher-grade coal in the district, however, or the increased cost of mining that coal, due to mining at a greater depth or to other causes, may advance the selling price of the high-grade coal in the market to a point at which it becomes possible to mine the low-grade coal (which has remained untouched) with as much profit as that obtained on the high-grade coal. Then land containing this easily available low-grade coal becomes worth as much as land containing the less accessible higher-grade coals.

QUANTITY OF COAL.

The quantity of coal underlying a tract of land may not affect the selling price of the land so strikingly as the quality or character of the coal. If, of two areas tested, one contains a coal bed averaging 4 feet thick, and the other a bed of similar coal 6 feet thick, in general the latter land will not sell for one-half more than the former. This discrimination is in part due to the fact that the thickness of any coal bed is more or less variable from place to place, and experience has shown that the average thickness found in mining is likely to differ somewhat from the average determined by the most thorough prospecting. Again, as much coal may be taken out of a 3-foot bed by long-wall mining as may be taken from a 4-foot or 5-foot bed by other methods of mining.

For mining a thin coal bed (a bed less than 3 feet thick, say) miners usually demand a higher rate of pay, the rate increasing as the thickness of the coal decreases, and they refuse to mine at all any bed below a certain thickness. On a thin bed, therefore, the increased cost of mining may destroy all profit, so that coal below a certain thickness can not be profitably mined, and if the whole bed is of that thickness or less it is classed as not workable, and the land is considered valueless as coal land so far as that bed is concerned.

The term "nonworkable on account of thinness" is, however, a relative term, for a bed that is too thin to work to-day may with changed conditions be worked at a profit ten years or fifty years hence. Two concrete examples will illustrate this point:

1. The reputation of Clearfield coal was established on coal obtained from the Moehannon bed, in Clearfield County, Pa. The coal in the mines in the sixties and seventies averaged over 5 feet thick. The coal was so abundant that parts of the bed that were less than 5 feet thick or that contained coal a little below the standard grade were passed by as unminable. To-day a host of small mines are recovering those passed-by pieces, and much of the new mining is done in a split of the Moehannon bed that is only 2½ feet thick.

2. In 1897 the writer mapped large areas south of Brazil, Ind., which were dotted over with the dump heaps of old mines that had worked out the upper block coal. The lower block coal in the same areas had proved unworkable. In 1908 the same areas were dotted with new slack piles, telling of the complete mining out of the lower block coal. The changed conditions in eleven years had made it possible to mine out the lower block with profit.

The same story can be repeated from a large number of the older coal fields, and it is therefore evident that, within certain limits, coal beds so thin that they can not be profitably mined to-day have a prospective value, which may be roughly estimated at their value when mined, less the cost of carrying to that time.

In the pioneer stages of buying coal lands, when the price is but a few dollars an acre, little or no account may be taken of the quantity of coal underlying a tract of land—that is, land containing two or three workable beds will sell for the same price as land containing only one bed. As a rule it is conjectural how much coal there may be under these lands. As prospecting and development reveal more and more the actual or probable quantity of coal under a tract of land, and as prices approach more nearly actual market values, the true volume of coal is more and more taken into account in determining the value of the land. But in fields where mining has long shown a general regularity in the thickness of a bed—such as the Pittsburg bed or certain beds in the Illinois-Indiana field or in the Canon City field of Colorado—the price of the land may vary from place to place with variations in the thickness of the bed, the price being estimated by the acre-foot of coal, or at so much per acre for each foot of coal, by estimated thickness.

Where there are several beds on the same land it is the general practice to work only one bed at a time, if one or more of the beds are better or thicker than the others. The unworked beds must then be carried while better beds are being worked. If all of the beds are paid for at the same price, the carrying of these unworked beds imposes a burden on the bed that is worked. In order to avoid this burden it is usual to put a low value on all but the best bed, the deduction being greatest for the beds likely to be worked last.

Where the beds are of nearly equal workability it is not uncommon to work two or three beds on the same tract at the same time, as in the Appalachian coal field, where the beds outcrop at different levels on hill slopes. A concrete example of this is seen in the mines on Bennetts Fork, in the Middlesboro district of Kentucky, where the beds worked are several hundred feet apart and separate inclines are used for each level.^a In Indiana at many places shaft mining is done on two or three beds on the same land at the same time. Most of these beds are less than 100 feet apart (two of them are only 30 feet apart), and separate shafts, or "twin shafts," are used to raise the coal from the different levels, or a shaft or slope is driven to the lower bed and the coal of the upper bed is let down by means of a drop shaft or an interbed slope. Two beds that dip may be mined from a single opening by a rock crosscut driven from one bed to the other, as in the Big Four mine, Huerfano County, Colo., where two beds, 4 and 7 feet thick and 60 feet apart, are thus worked.

If two or more beds fairly close together are worked at the same time, peculiar devices must be employed, such as that of leaving a heavy block of coal in the lower bed under the entries in the upper bed, so that the plan of giving a reduced value to the second, third, and other beds, in order of workability, may well apply whether the beds be worked successively or at the same time.

^a Prof. Paper U. S. Geol. Survey No. 49, 1906, Pl. I, etc.

Where there is more than one bed, another factor must be considered—the effect of mining the thick lower bed on the mining of overlying thinner beds later. If the beds are mined successively from the top downward, little difficulty is encountered, except from the accumulation of water in the old workings of the mine above; but where the first bed to be worked is not the uppermost bed, the settling of the roof may disturb the lay of the beds above and possibly render some of them unworkable. It is obvious that the effect on the overlying coal will vary with the thickness of the underlying bed, the distance between the beds, the character of the intermediate rocks, and the method of mining.

In the Clearfield district of Pennsylvania the Moshannon bed, a 5-foot bed, is overlain at about 35 feet by the “Cap” bed, 3 to 4 feet thick. The intervening rocks are mainly shales and sandstones in varying proportion. Mr. Cameron, superintendent of the Berwin-White mines in that district, reports that recent attempts to mine the “Cap” bed in the area where the Moshannon bed had been mined had found the upper bed but little disturbed, or not at all, certainly not enough to interfere seriously with its mining. On the other hand, Mr. Davis, of the Evanston land office, states that, to his personal knowledge, the mining out of a 12-foot bed disturbed the rocks to a point 250 feet above the bed, solid rock being found only at that height. A similar disturbance of the roof, produced by the destruction of underlying coal beds, is seen in the areas of burned-out coal that are so abundant throughout the West. In general, it would seem safe to assume that the working out of a lower bed will not seriously disturb a bed that lies at a distance above it equal to more than twenty times its thickness. In many places coal beds one-half that distance above a mined bed will not be seriously broken up.

The value of the thick beds of the West, ranging from 50 to 80 feet, is still problematic. Beds up to 15 feet thick are successfully worked. Robert Forrester states that it should be possible to get 80 to 90 per cent of the coal from a 14-foot bed. From beds above that thickness the percentage of recovery with present mining practice is likely to fall rapidly with increase in the thickness of the beds until, with beds from 30 to 80 feet thick, the recovery may drop down to 25 per cent, or the bed prove to be unworkable by present methods. Numerous attempts to work beds over 30 feet thick have had to be abandoned. In some of the western mines on thick coal—as in the Colorado Fuel and Iron Company's mine at Newcastle—it has been impossible to keep out fire. On the other hand, in the anthracite region of Pennsylvania and in European countries thick coals are successfully mined, the method being to mine out a part of the coal, fill in the area excavated so as to support the roof, then mine out the rest of the coal. In its details the method varies greatly, but the general principle involved is the same. Where the strata are more or less inclined, dirt or slack may be flushed in as in the anthracite field. It has been suggested^a that in some places the workings could be properly planned and the flushing done through unlined bore holes, such as are used for oil wells.

In a mine in Scotland, where the conditions are peculiar, a 30-foot bed can be completely mined out.^b The coal is underlain by a very soft clay, and as fast as the bottom 5 feet of the bed are mined the clay rises and fills the space vacated, making a new floor on which another 5 feet can be taken, and so on until the whole bed has been recovered.

Nevertheless, the fact remains that while there can be no doubt as to the workability of the beds of the Western States, with a high percentage of recovery from most of them, they can not be so worked to-day with financial success in competition with other coals. Where it is necessary to fix the price on a thick bed for immediate sale and mining, the writer would suggest that it be considered as a multiple bed—that is, that the first 15 feet of it be considered as a first bed, carrying full value; that the next 15 feet be considered a second bed and valued accordingly; that the third 15 feet be considered a third bed, etc.

COMPETITION.

That competition affects the value of coal land is obvious. The term “competition” as here used means not only competition between mines, but competition between transportation companies and buying and selling agencies. Without competition the coal may be worth as high as \$1 a ton in the ground, and royalties as high as \$1 a ton are being paid in the West under those conditions. Without competition the difference between the selling price at the mine and the cost of production in some places in the West is over \$1. Obviously were such conditions to continue in any large

^a Forrester, Robert (oral communication).

^b Parker, E. W. (oral communication).

area until the beds had been completely worked out the land would have a value of over \$1,000 per acre-foot, less the cost of carrying it. In one area in Utah the difference between the cost of mining and the selling price was \$1.15. In another it was estimated to be \$1.25. Suppose the future profit of mining at the first place be reduced to \$1 a ton. The coal being mined is 22 feet thick, of which 14 feet are obtained, a recovery equal, at the conservative estimate of 1,000 tons per acre-foot, to an output of 14,000 tons per acre, selling for \$14,000 more than the cost of mining. The land was originally purchased from the Government at \$20 an acre. It has therefore yielded an income (aside from the interest on \$20) of \$13,980. Suppose that an acre of such land were purchased January 1, 1910, and mined out within a year. It is evident that \$13,000 an acre might be paid for it and yet the investment might yield 15 per cent. Of course such conditions are rare and uncertain of continuance. The example given, however, shows that where competition is lacking or is controlled an acre of land just ahead of an active mine will yield a good return on a seemingly abnormally high purchase price. It is usually impossible to purchase a tract so small that it will not take several years to mine it out, and the interest and taxes on the land for the average number of years the coal is carried, together with the uncertainty that present conditions will continue, tend to reduce an apparently safe purchase price 50 to 75 per cent or more.

The preceding example may be looked at in another way. The lessor is actually receiving a royalty of 75 cents a ton, the other 40 cents being the profit of the operator. If such a tract of land, under lease of such a royalty, be mined out in twenty years and yield 14,000 tons per acre, what would it be worth to the owner at the beginning of the twenty years at a price that will yield 10 per cent interest on the investment, compounded annually, with taxes at 1 per cent of the purchase value? If X equals the purchase price, then—

$$X = \frac{14,000 \times \$0.75}{1 (1.10^{10} + 20 \times 0.01)} = \$3,684.$$

Interest is computed for the average time the coal is carried, or ten years. This gives \$3,684 as the purchase price that the lessor might pay and get 10 per cent on his investment, if only the items of interest and taxes be considered.

Were the royalty only 10 cents a ton, as doubtless it would be if competition were open, the same land, in the same time, would yield the lessor 10 per cent on an investment or purchase price of \$491 per acre, if the purchase covered only this one bed. Actually there are three beds under the land. These two prices, however, show clearly the possible difference in value in the West between land in one place where there is competition and in another where there is none. This land was purchased from the Government for \$20 an acre.

In the Middle West or Mississippi Valley fields, where the great development of coal-carrying railroads and the policy of making low ton-mile rates for long hauls has resulted in excessive competition, royalties have been forced still lower (from 2 cents to 5 cents a ton), and correspondingly lower prices have been paid for the coal land. George S. Rice^a cites lands in Illinois containing two workable beds, 6 feet and 8 feet thick, which sold for \$10 an acre. If only 50 per cent of the coal can be mined, these beds should yield 13,000 tons, or, at \$10 an acre, one-thirteenth of a cent a ton. The coal is practically given away. This condition is exceptional even in Illinois, and applies only to lands not now accessible to railroads. Mr. Rice says that lands in the Wilmington long-wall district sell for \$50 an acre on an average, for a bed a little under 3 feet thick, or about 1 cent a ton; in other places in Illinois the land sells for as much as \$100 an acre.

As a result of the keen competition in the East, Mr. Parker^b reports that "there were few districts in which the margin between the cost of putting the coal onto the railroad cars and the price at which it was sold was as much as 10 cents a ton. In many States it is considerably less than 10 cents a ton * * *."

"Competition" is often a relative term. A town may be near a small local coal field and a long distance from the nearest large competing field. Thus it may happen that although the town has good railroad connections with the distant coal fields and receives from them an abundance of coals, yet the freight rates may be so high that mines in the neighborhood may be able to pay seemingly exorbitant royalty as well as high rates for hauling, etc., and still be able to compete. Under such conditions, even though there is competition, it may not seriously affect mines that have the advantage of nearness, and the near-lying coal lands become valuable. For example,

^a Bimonthly Bull. Am. Inst. Min. Eng., November, 1908, p. 1128.

^b Idem, November, 1909, p. 1015.

the value of coal lands near Colorado Springs, according to the county assessments, is more than three times the value that would be fixed by the Geological Survey under the regulations.

KNOWLEDGE OF COAL CONTENT.

A knowledge of the coal content of any land is obviously a large factor in determining the value of that land if the quantity and quality of the coal count at all. Land on which no coal is known to outcrop or which is not even certainly known to be in a coal field will have a minimum value as coal land. The coal rights of certain large tracts have been purchased for 50 cents an acre on the possibility that they might contain coal, as, for example, in the Elkhorn field of Kentucky, now one of the most valuable fields in the United States. Some such purchases are in the nature of a speculation—"a gamble"—neither party to the transaction knowing whether there is coal under the land or not. In other purchases the buyer, from his knowledge of geology or by casually tracing exposed strata from some neighboring region where coal can be seen or is being worked, is able to assume with some confidence that coal is present in the land. In the heart of the Appalachian coal field there are thousands of acres that show hardly an outcrop of coal on account of the heavy growth of timber and vegetation. Mr. E. V. D'Inwilliers describes^a an area of nearly 200,000 acres in West Virginia as "a coal field without outcrop" prior to development. Some of the first purchases of this field were made for \$5 an acre. Later purchases were for \$12, and as prospecting developed the presence of rich beds of coal prices rose accordingly.

In another tract of 78,000 acres in the same State only one opening had been made on the coal. In the Block coal field of Indiana the important coal beds occur in small basins, separated by large areas bearing only thin coal beds. The coals are near the surface, but outcrop at few places because they are hidden by a mantle of glacial drift. This drift has also filled up and obscured the old preglacial valleys that may have cut out the coal. Here, evidently, no land is purchased as coal land before every 10 acres of it has been drilled, unless it be purchased as a pure speculation and at a price that will involve little loss if the land proves to be barren of coal.

On the other hand, many areas in the "bituminous" field of Indiana have been drilled so thoroughly and deeply and the coals run so regularly that it is possible to estimate the future recoverable tonnage within a few per cent. Such land should have a value equal to the royalty value, less the cost of carrying the land to the time of mining and a slight margin for accidents and other contingencies. In Pennsylvania and other States, both East and West, many areas have been prospected so thoroughly that their coal content can be computed within 5 or 10 per cent. The value of such land may be estimated as closely as the price of a town lot. Evidently the owner of such a tract will not sell it for less than he thinks it worth, unless he is compelled to sell by financial or other stress.

It is under conditions of very thorough knowledge that the Pittsburg coal bed sells for \$70 to \$400 (as reported) per acre-foot, the price varying according to the accessibility of the coal to lines of transportation, etc. Mr. W. Weston, superintendent of the land and industrial department of the Moffat road in Colorado, when asked what coal lands along his road were worth, replied that they were worth what they would bring in royalties.

Between the two extremes—one in which practically nothing is known of the coal content of the land and the other in which the coal content is known with great accuracy—lie the great bulk of the coal lands of the United States, though the areas about which nothing or little is known are now becoming very limited, for every year large districts are transferred from the unknown to the known side of the ledger. But considerable areas of partially known coal fields still remain—fields that have not been studied by a geologist, or that have been studied only in a reconnaissance way. In nearly all of these fields the area underlain by at least one workable bed is accurately known, but in some fields the work done has not yet given complete knowledge of all of the beds, and in these the price of land is much lower than it will be when the full coal content has been determined. In all of these fields, other things being equal and the buyer and seller having equal knowledge of the coal, the land will sell not for the value of the coal it does contain, but for the value of the coal it is known to contain. If it contains three beds and only one of them has been discovered, obviously the other two will not be included in computations of the value of the land. So, too, if there are only a few openings on the coal and, even though some of these show the coal to be of workable thickness, if it is not known whether they are on the same bed or whether

^a West Virginia Geol. Survey, vol. 2, p. 631.

the coal between the openings is likely to be workable, the buyer, in determining the maximum price he can pay, will figure on the smallest possible amount of coal the land may contain, as indicated by the facts known. In valuing lands whose coal content is only partly known, it is difficult to weigh justly the evidence available and to draw therefrom general conclusions that will be of undoubted value. If dependence be placed entirely upon available facts of local application only the most conservative estimate will be safe. Where, however, a broad knowledge of the same beds or of the same group of beds in other or adjacent areas is at hand, or where there is wide knowledge of the results of development under somewhat similar conditions elsewhere, it may be possible to draw general conclusions that warrant the assumption that the land contains much more coal than it would otherwise appear to contain.

Thus, on an undeveloped tract of land there may be only two openings on the coal, several miles apart, each showing workable coal. If this be the extent of the available knowledge, it may be thought safe to assume that only a few acres of workable coal exists around each of the two prospect openings. If, however, it may be inferred from the stratigraphy that the two openings are on the same bed, and if, by means of openings a few miles farther north, the coal can be traced with great regularity for 50 miles northward, and the same way in other directions, the geologist may be justified in assuming that the bed maintains a workable thickness under the whole tract, and the land may be valued accordingly, some allowance being made for uncertainty. Again, if it is known that the bed just considered is usually underlain or overlain by other regular workable beds, even if these other beds have not yet been discovered on the land in question, such knowledge would justify the conclusion that these other beds are probably present, a conclusion that would increase the estimated value of the land, though with a great allowance for uncertainty.

If any or all of the beds are inclined to be pockety or irregular, the allowance for uncertainty must be correspondingly large. Where they are so irregular or pockety that a large percentage or most of the land in developed areas is barren, the unprospected areas must be rated as noncoal land until the presence and the thickness of the coal has been actually demonstrated.

Another condition that renders difficult the valuing of coal land is common in the West, where knowledge of the coal beds is derived entirely from exposures along an outcrop that extends in a more or less nearly straight line. How should the lands back from the outcrop be valued? In the East and parts of the West the mountains are thoroughly dissected and the crop line of a coal bed is of zigzag form—that is, it follows in and out of one ravine or valley after another, zigzagging back and forth in every direction. In such a region it is usually possible to get sections in different directions at right angles to each other and to observe any tendency toward thinning in any direction. But in parts of the West where the topography is young and simple and the country is little dissected it happens in many places that the outcrop extends, say, north and south, and there is little or nothing to show whether the coal holds its thickness back from the line of outcrop in an east or west direction. Under these circumstances experience has seemed to justify the assumption that the coal will run as far back from the crop at any one point as from that point to the nearest place along the crop where the coal becomes unworkable. Thus if a given coal has a continuously workable section for 10 miles along the face of an escarpment it is assumed that at the middle of such an outcrop the coal may extend back from the crop for 5 miles, and for correspondingly less distances as the two ends of the workable outcrop are approached, so that the area assumed to be workable is roughly a semicircle with a radius of 5 miles. Reduction for uncertainty should increase in going back from the crop.

In general it may be stated that the valuing of coal lands ahead of actual mining must always be based on partial knowledge, but that partial knowledge must be expanded or projected to cover the whole area to be valued. It is in this expansion that the personal judgment and experience of the valuer enters. First, the partial knowledge on hand must be so arranged as to show, if possible, how many beds of coal, or at least how many groups of coals, there are, how regular each bed is, and how many beds underlie each acre, and at what depth. The number of beds is determined by comparing sections across all of the beds, taken at different places, and, wherever possible, tying individual beds together by actually tracing them or their horizon from point to point. Often these sections must be correlated by tracing from point to point some rock other than coal. In the West many coal horizons can be traced by a line or band of red clinker and reddened shale, caused by burning on the outcrop. The regularity of the individual beds is determined by comparing the sections on each bed over the whole field, also by comparing lines of sections in selected directions, in the hope that it may be possible to determine apparent thickening or thinning in some direction. By platting both horizontally and vertically all the

dips noted in the field the structure of the field may be determined very accurately and the depth of each coal bed may be computed.

In areas where data are abundant and show that the coal beds are fairly regular it may be possible to assume the thickness, quality, and depth of coal with a large degree of probability and to fix values accordingly. Where data are meager or where the coals appear to be thin and irregular, the element of uncertainty becomes correspondingly large, and the appraised value of the land will be rapidly decreased away from the points of known workable coal unless additional data on the same coal-bearing rocks in other districts show that the few facts known in the district or tract under consideration fit in with the broad knowledge possessed. In a small detached field little or no coal may be exposed, but from knowledge gained in neighboring fields, where the same rocks are known to carry several workable coals, it must be assumed that the same coals occur in the small field, unless direct evidence to the contrary exists, though because of lack of direct confirmatory evidence the price of the land in the small field must be reduced for uncertainty.

ACCESSIBILITY.

Accessibility is a most important controlling factor in the value of coal land. One of the largest single items in the cost of coal to the consumer is the expense of transportation from the mine to the point of consumption. This is seldom less than 50 cents a ton, and may be \$6 or \$8 or more a ton, as in many places in the West. Indeed, there are 15-day large areas of coal, in both the East and the West, from which the present cost of transportation to the nearest commercial market would be more than \$8 a ton. Unless such a field can find or develop a local market it has only a prospective value until transportation facilities can be provided.

For a body of coal land that lies off the line of a railroad the prospective operator usually builds the necessary spur from the railroad to his own property. Ultimately the cost of building this spur does not impose a burden on the coal, as it is borne by the railroad company and paid from freight charges, but it may form an additional initial expense that may entirely prohibit mining unless the operator controls an extensive tract and has large capital to start with. For some such spurs the railroad companies supply the rails and the operators furnish the grade and ties.

Leaving out of account for the moment other elements that render coal inaccessible, the question arises—the cost of railroad spurs (except interest thereon) not ultimately standing against the coal—Should distance from the railroad lower the value of coal land?

In ordinary commercial practice every increase in the distance of coal land from a railroad or other line of transportation serves to decrease the value of the land, mainly because of interest charges to be carried through the uncertain time until the coal can be developed. Other things being equal, lands close to a railroad will be developed first, those farther back later—how much later is uncertain—those still farther back still later. Lands on a railroad may be opened up within ten years; lands farther from the road may have to wait another ten years, and so on. As a sum at 7 per cent interest, compounded annually, will double itself in ten years, every ten years that the land is likely to remain undeveloped cuts its value in two. Strictly speaking, lands back from a railroad are not “on the market” for development, although they may be the object of speculation.

As heretofore indicated, the law fixes the minimum selling price of coal lands which lie within 15 miles of a railroad at twice as much as lands lying beyond the 15-mile limit. Under the terms of the law the minimum price of lands that formerly lay more than 15 miles from a railroad is automatically doubled by the construction of a railroad that brings them within the 15-mile limit. If it be assumed that 15 miles is the limit to which a private operator can afford to build a switch, or over which he can afford to haul his coal by wagon for loading on a train, it is evident that, commercially considered, coal lands beyond the 15-mile limit are inaccessible and have no real present value as such, though they may have a prospective value.

Other factors also may render the coal more or less inaccessible, such as depth, high position in a hill, and intervening obstacles—rivers or mountains, say—between the land and the railroad. Where an obstacle exists, it is practically necessary to consider the distance to the railroad as equivalent to the distance around the obstacle rather than over or through it in a straight line.

Depth is an element of inaccessibility that obviously works to the disadvantage of the coal, increasing the cost of mining, and, if beyond a certain level, decreasing the possible net recovery, and on both accounts decreasing the value of the land.

The limit of depth below which coal can not be mined is uncertain. Shafts practically 4,000 feet deep are operated in Belgium, and coal at about the same depth in England has been considered workable. This subject is more fully discussed by Mr. Fisher in his paper in this bulletin. Differences in the roofs and floors of coal beds

and in the quality of the coal they contain make differences in the depth to which a bed can be profitably mined. In valuing the public coal lands the United States Geological Survey has conservatively taken 3,000 feet as the limit of workability. Further, the Geological Survey has taken the ground that if coal just beyond 3,000 feet in depth is nonworkable, and therefore of no value, coal just within the 3,000-foot depth will be mined at the maximum expense and with the minimum recovery, and should therefore be priced at the minimum value, and that the value should increase from that minimum at 3,000 feet depth to a maximum at the outcrop.

In computing the depth of coal it has been the practice of the coal-land board to determine its depth below the level of a drainage way for all land within 2 miles of that drainage way, neglecting otherwise the intermediate topography. In broad plateaus underlain by coal at greater depths than 3,000 feet the coal has been considered workable for only a distance of 2 miles from its crop, it being considered accessible from the crop horizontally, though inaccessible vertically.

COST OF MINING AND MARKETING.

The cost of mining and marketing coal is determined by the sum of many expenses—initial expenses, or operating expenses, or both. Under ideal conditions the initial expense of opening and equipping the mine is the minimum, the thickness and quality of the coal allow the most favorable mining rate, the bed is without partings or other impurities requiring washing or hand picking, the roof is ideally strong or breaks down as desired for long-wall mining, the floor does not heave, water is at hand for the boilers outside but not in the mine, there is timber for the timbering, a town for the housing of the miners, the coal lies so as to facilitate hauling and draining, there is no gas at the face, and there is a steady market for mine-run coal on yearly contracts, with plenty of cars for its shipment.

These ideal conditions are not the normal conditions and seldom, if ever, exist together at one point. Competing fields may fall equally below the ideal, so that only where some particular cost of mining becomes excessive does it enter into the value of the land. One mine may be favored in certain particulars, another in others, but in a large measure these advantages balance one another, especially among mines in any single district or field. The factor most easily allowed for is depth. The construction of a deep shaft not only costs money, the interest on which is a permanent charge against the coal, but increases the expense of mining by the cost of the power and of the care required for hoisting, and even more by the time required for hoisting; and the cost of operating such a shaft may ultimately increase the expense of the plant beyond the point of profit.

In the arid parts of the West lack of timber or of water may greatly increase the cost of mining. Partings or other forms of impurity may necessitate washing or handpicking. In mining thin beds it may be necessary to handle much roof or floor material. Even more serious may be the increased rate for mining thin beds demanded by the miners, and the rate increases rapidly with decrease in the thickness of a bed. For example, in the Indiana Block coal field the price for pick mining advances from \$1 a ton for coal 3 feet 1 inch thick or more to \$1.05 for coal between 3 feet 1 inch and 2 feet 10 inches, and to \$1.10 for coal less than 2 feet 10 inches thick. Where coal is purchased in the ground at 1 cent to 2 cents a ton it is impossible to compensate the purchaser for the added cost of mining thin coal by reducing the purchase price; indeed, it may be that he would not be compensated even though no price were charged for such coal.

DEMAND.

Everything that increases the demand for coal at a given place enhances the value of the coal land from which that place is supplied. For example, the exhaustion of the natural gas in the Indiana gas field largely increased the demand for Indiana coal and to a perceptible degree affected the value of lands in those parts of the field that supplied the market relinquished by the natural gas. So, also, the opening of irrigation projects in the West, by enlarging the possible market, adds to the value of the adjacent coal fields.

On the other hand, by slightly manipulating freight rates or by building a new line of railroad, it is not infrequently possible to displace the coal from one field by the coal from some other field. This practice has virtually "killed" a formerly thriving field, and the price of coal lands there has dropped, just as the price of land in a small town drops when the principal manufactory moves to another town.

Again, a steady demand coupled with a limited supply forms the main cause of the higher prices of anthracite coal lands, of lands underlain by the Connellsville (Pittsburg) coking coal, and of cannel-coal lands. The supply of all of these coals is very

moderate, and the demand, except possibly that for the cannel coal, gives promise of holding good as long as the coal lasts, with no other coal in sight that supplies certain needs quite so well. As such coals become scarcer and scarcer the difference between their selling price and that of other coals becomes very great. Large steel companies have felt warranted in paying as high as \$100 or more an acre-foot for coal of the Pittsburgh bed to hold for future use.

ARTIFICIAL AND LEGAL RESTRICTIONS.

Artificial and legal restrictions seem destined to play a larger part in the value of coal lands in the future than in the past. It has already been noted that favorable or unfavorable freight rates can make or unmake a coal field. The passage and enforcement of a smoke law in a large city may seriously affect the coal field now supplying that city with smoky coal. In the same way the passage of mining laws for the protection of miners may increase the cost of mining the coal in some State and to that extent put the coal fields in that State at a disadvantage with other competing States and, by reducing the profits per ton, reduce the earning power of the coal and to that extent reduce the value of the coal in the ground. Uniform mining laws for all competing States would obviate the unfavorable effect of such laws on the value of the coal land.

On the other hand, trade agreements may act beneficially on the value of coal lands. It is generally true that good times and hard times balance each other. The mining companies may coin money during good years and carry on mining at a loss during hard times. If a company be well financed, it may for months actually sell coal at less than it cost to mine it, in pursuance of a policy adopted as cheaper in the long run than shutting the mine down. During hard times it has seemed wise to restrict production and maintain the price of the coal. A company that is not well financed may find it financially necessary to keep up its production by cutting the price, and as the lowest price will generally control the market the price drops all around, to the demoralization of the whole business. Prices once down are slow to recover. The result of a lowering of prices is clearly seen in the conditions existing in the coal trade in the East to-day, following the hard times in 1907. A corollary of these conditions is seen in the cheapening of the value of coal lands, and in the cheapening of methods of mining, with consequent smaller net recovery per acre, to say nothing of other undesirable results. The condition can be met in one of two ways, either by the absorption of the weaker companies by the stronger, with all of the attendant possibilities of monopolistic control, or, as suggested by Mr. Parker,^a by governmental supervision and regulation, possibly by a system of licensing.

MARKET VALUE OF COAL LAND.

BONDING VALUATION OF COAL LAND.

As has been stated, the market value of coal lands may be determined in three ways—by what coal companies estimate them to be worth when they wish to bond them, which may be taken as a liberal estimate; by the tax assessor's valuation, which may usually be considered a conservative estimate; and by the prices at which sales are actually made, which will usually lie between the liberal and conservative estimates.

The study of a single area of bonded coal land in one of the public-land States, the bonds for which are handled and guaranteed by one of the largest and most conservative brokerage houses after an examination and estimate by a widely and well-known mining engineer and coal-mine manager, may serve to show the coal company's view of the matter when selling.

This land contains five beds of high-grade bituminous coal, ranging in thickness from 7 to 25 feet and having an aggregate average thickness of 60 feet. Each acre is computed to contain, "at the most conservative estimates," 100,000 tons of coal. This, it will be noted, is the gross, not the net tonnage, and on this gross tonnage the value is estimated on the "strictly conservative basis of 1 cent per ton of coal," the estimate giving as the value of each acre \$1,000. For comparison it may be noted that the government price on some similar coal lands in Wyoming, where the land is estimated, on abundant data, to contain 75 feet of workable coal, ranges from \$465 down, averaging probably less than \$300. The basis of valuation here was 2 cents a ton for a net recovery of 1,000 tons per acre-foot, with a percentage reduction for all but the best bed, and with allowance for crop coal, depth, and uncertainty.

^a Bimonthly Bull. Am. Inst. Min. Eng., November, 1909, p. 1016.

ASSESSMENT VALUATION OF COAL LANDS.

In comparison with such valuations as those just given it is of interest to note the valuations being placed on coal lands by county assessors. Figures have been obtained from several of the eastern coal fields, and also from Colorado, as typical of the West. The figures from Colorado were taken from the state auditor's report and supplemented by data supplied by the several county assessors. In Wyoming the coal in the ground is not taxed, but instead the coal is taxed on its cash value as mined, at the same rate as other property in that locality. In Colorado and in most other States developed coal lands are assessed at a much higher value than undeveloped coal lands. In the Pittsburgh coal district of Pennsylvania, where the values are fixed entirely by that remarkably regular coal and where it is possible to assume knowledge of the coal content of any acre of land whether developed or not, the assessment is just the same for undeveloped as for developed lands. Undeveloped lands elsewhere would be assessed the same as developed lands if we had the same knowledge of their coal content. In some places, as in part of Indiana, the coal is separated from the surface and is taxed at a uniform rate, the surface being taxed at rates depending on location or other features, in accordance with the general principles of land taxation.

County assessors commonly assess as coal lands only those being developed and treat undeveloped coal lands as grazing land or farm land, taxing them accordingly, as if they contained no coal. Developed coal lands are still more commonly assessed entirely on the value of the coals being worked, without regard to other coals that may underlie the land. In places the assessment varies with the average thickness of the coal. In other places, where the coal property is partly barren or worked out, the land is not assessed at two rates but an average assessment is computed, based on the amount of the coal that is being worked remaining in the ground.

In places where the coal land is most valuable the method of assessment has usually been worked out with much care and often with considerable geologic knowledge of actual conditions.

The following table gives data from selected points, including the range of assessment of coal in developed properties (exclusive of improvements) down to assessments on undeveloped lands off railroads and of small or unknown value, the ratio between the assessed and the assumed real value, and the assumed real value as estimated from the assessments.

Assessment value of coal lands per acre.

EASTERN COAL FIELDS.

Location.	Average assessments.	Range of assessments.	Ratio assessed to assumed value.	Assumed value.
Pennsylvania:				
Luzerne County.....		\$8,000	$\frac{1}{4}$	\$10,000
Clearfield County.....		2-50	$\frac{1}{4}$	8-200
Cambria County.....		10-50	$\frac{1}{4}$	30-150
Fayette County.....		400-600		
Westmoreland County.....		430-680		
Ohio:				
Belmont County.....		6-30		
West Virginia:				
Kanawha County.....		20-100	$\frac{1}{2}$	60-300
Raleigh County.....		200		
McDowell County.....		250		
Kentucky:				
Henderson County.....		10-12		
Tennessee:				
Claiborne County.....		25-40		65-100
Alabama:				
St. Clair County.....		1-6		
Indiana:				
Sullivan County.....		\$ 15		30-110
Greene County.....		\$ 15-35		
Warrick County.....		\$ 5-6		
Illinois:				
Grundy County.....		14-37	$\frac{1}{2}$	40-110
Bureau County.....		16		
St. Clair County.....		25-50		
Franklin County.....		15-35		25-50

* For coal only.

Assessment value of coal lands per acre—Continued.

WESTERN COAL FIELDS.

Location.	Average assessments.	Range of assessments.	Ratio assessed to assumed value.	Assumed value.
Colorado:				
Boulder County.....	\$68.00			\$204
Delta County.....	20.00	\$20-50		60-150
El Paso County.....	51.66			155
Fremont County.....	29.46	10-40		30-120
Garfield County.....	37.40	10-50		30-150
Gunnison County.....	33.00	15-80		45-210
Huerfano County.....	28.00	2-70		6-210
Las Animas County.....	13.50	5-75		10-150
Mesa County.....	20.00			60
Pitkin County.....	16.34	4.50-30		13.50-90
Weld County.....	25.97			
Utah:				
Emery County.....		10		25

SALE PRICES OF COAL LANDS.

The market value of coal lands, as shown by actual sales, varies as it may be affected by the various factors previously described, ranging from almost nothing to the full royalty value, or even, as in lands carrying the Connellsville coking coal, to more than its apparent royalty value. Where, as they generally do, the lower prices represent not so much low value as incomplete knowledge or present inaccessibility, they do not show what the land would bring if its coal content were known or if it were accessible. The effect of lack of knowledge on the part of the sellers may be seen in the purchase by one of the large coal companies in the West of its present coal holdings at prices ranging from \$80 down to \$3 an acre, the price depending hardly, if at all, on the quantity and quality of the coal, but on the seller's knowledge not only of the amount of coal but of its value. The highest prices were paid for lands containing coal of which the seller had some knowledge. Many of the lower prices were the result of mere dickering. "They could get plenty of neighboring coal for so much, and if the seller did not accept their terms they would pass him by," an argument that usually got the land at the buyer's price, especially if the seller had little or no knowledge of the actual coal content of the land and its value.

Again, a large share of the sales recorded are on undeveloped property, much of it at some distance from railways, for in the reports of sales of developed property it is not usually stated how much of the price is paid for improvements and how much for the coal and coal land. Some of the data given in the following table were obtained by correspondence with the officers of large operating companies in the districts mentioned, some by personal interviews, and some from records of coal-land sales reported in the mining journals, from advertisements of coal lands for sale, or from other like sources.

Sale prices of coal land in the bituminous fields of the United States.

Locality.	Price per acre.	Price per acre-foot.
Pennsylvania:		
Pittsburg district.....	\$800-\$1,200	\$110-\$170
Connellsville district.....	1,200-2,000	170-300
Clearfield district.....	100-250	
Cambria district.....	30-150	
West Virginia:		
Fairmont district.....	35-500	6-60
Kanawha district.....	40-300	6-60
Pocahontas district.....	50-350	10-40
Virginia:		
Buchanan County district.....	50-60	10
Kentucky:		
Southeastern Kentucky.....	10-50	
Elkhorn district.....	200	
Western Kentucky.....	10-40	

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Sale prices of coal land in the bituminous fields of the United States—Continued.

Locality.	Price per acre.	Price per acre-foot.
Tennessee:		
Jellico district.....	\$12. 50- \$125	\$4- \$40
Claiborne County district.....	65- 100	
Alabama:		
Jefferson County district.....	20- 150	
Indiana:		
Terre Haute district.....	• 50	
Greene County district.....	100- 200	
Boonville district.....	60- 150	
Illinois:		
Grundy district.....	10- 150	
Rock Island district.....	40- 110	14- 40
Springfield district.....	50- 75	
Southern Illinois.....	10	15
Arkansas.....	25- 50	
Missouri.....	15- 25	
Kansas:	50- 75	
Pittsburg district.....	100- 150	50
Colorado:		
Boulder district.....	50-187. 30	
Carbon County district.....	20- 25	
Colorado City district.....	100-187. 30- 500	23- 100
Elbert County district.....	• 35	
Johnson Mesa district.....	7. 50- 25	
Jefferson County district.....		
Routt County district.....		
Bituminous.....	50- 100	
Anthracite.....	150- 250	
Trinidad district.....	• 20- 60- 300?	15
Walsenburg district.....	100-187. 30- 500?	23- 60
Wyoming:		
Sheridan district.....	30-105. 50	
Rock Springs district.....	180- 430?	
Utah:		
Castle Valley district.....	30- 100	
New Mexico.....	10- 50	

• Mineral rights only.

Some additional facts may be given in extension and explanation of the table. The advance in the price of coal lands is well illustrated by examples from southwestern Pennsylvania. Many examples of this rise are cited in a book recently published, entitled "Coal Fields of Southwestern Pennsylvania."^a To quote from that work (p. 49):

"In 1885 large areas of Connellsville district coal lands were available for purchase at prices running up from \$50 to \$100 per acre. In 1890 to 1895 prices mounted up to \$600 and \$700 per acre. A belief was current that these prices were too high and would be lowered, but these coal lands at present command \$2,000 to \$2,500 per acre and will continue to advance beyond these figures, enormous though they appear.

"In 1897 the average price of coal lands in southern Washington and eastern Greene counties, Pa., was less than \$30 per acre—coal along the Monongahela River \$100.

"In the Fairmont, W. Va., mining district Pittsburg seam coal during the same period of time has advanced from \$50 and \$75 to \$300 and \$400 per acre.

"Hon. E. H. Gary, in an interview, stated:

"'Already we have 60,000 acres of coking-coal land in Pennsylvania, and are paying \$2,000 an acre for all that is offered us.'

"In 1899 Mr. J. V. Thompson sold John W. Gates for his steel and wire interests 5,000 acres at \$170 per acre. In 1907 Mr. Thompson paid \$1,700 per acre for adjoining coal.

"The Ellsworth Company purchased 7,000 acres of their coal for \$37.50 per acre in 1899, and the Lackawanna steel interests paid at least \$600 per acre for their proposition (adjoining) in 1907.

"In 1898 the Illinois Steel Company * * * secured about 7,000 acres along the eastern outcrop of the new field (Klondike field). Some of the options were taken as low as \$35 per acre—the latest purchases have been near \$2,000.

^a Boileau, John W., Coal Fields of Southwestern Pennsylvania, Pittsburg, 1907.

"In the Pleasant Unity district—that is, from Mount Pleasant to Latrobe—the coal was not considered good in early days. Near Hunkers Mr. Thaw purchased some at \$180 per acre. To-day the price would not be under \$3,000."

It is doubtless true that there have been special reasons for the very remarkable advances just described, yet advances appear to be taking place in nearly every coal field. Here and there are districts that, from lack of competition, have long enjoyed a prosperous trade, until the opening of a new railroad has brought new or cheaper coals into their market and has destroyed their trade. In such districts the price of coal lands has declined.

In Indiana excessive competition has forced prices down. In the early days of the Block coal field royalties of 20 to 25 cents a ton were often paid, and in Greene and Sullivan counties the royalties used to be about half that amount.

The action of other factors in depressing the prices of coal land is seen in the Trinidad field of Colorado, where the coal is mostly sold on large yearly contracts, at a relatively small margin, so that the profits on the coal obtained under any given acre are not so large as they would be in some other field, as in the Walsenburg and Canon City fields, which supply mostly the household trade at a greater profit per ton. A corollary of this small net profit per acre is seen in the lower prices per acre the land commands in that field, as compared with other fields of no more intrinsic value. In the Rocky Mountain fields, especially, dependence has been placed mainly on records of actual sales, which in some places are abundant, though in others only one or two have been obtained, and it is not known whether the figures cited are near the top or the bottom of the actual range. In general, the lower prices are for coals off the railroad. In some places the price is scaled down regularly as distance from the railroad increases.

BASIS OF THE GOVERNMENT VALUATION OF COAL LANDS.

WHAT IS COAL LAND?

The first step in any scheme of classification and valuation is to determine what is coal land. Any land underlain by coal that is of workable quality and quantity and exists under workable conditions is classed as coal land. In general, little or no question can arise. If the area is within the coal field as defined by the outcropping of workable beds, it may be presumed to be coal land, unless drilling or other exploration has demonstrated that there is no coal under it. There are large areas, however, where the presence of coal has been demonstrated, but the question arises, Is it workable? To some it may appear too poor, too thin, or too deep. How poor, how thin, and how deep coal can be successfully worked?

In general it may be stated that anything that will pass as "coal" is workable so far as quality is concerned.

Successful attempts are now being made to utilize peat as fuel, and the Rhode Island "anthracite," which is almost graphite in character and is shot full of quartz stringers and veins, is being exploited with some hope of success. It remains to be seen what percentage of ash or other impurities a coal can contain and yet be successfully marketed. Coals containing 25 to 30 per cent of ash are marketed to-day under exceptionally favorable conditions, and in the laboratory, by the use of the producer-gas generator, coals with as much as 40 per cent of ash have satisfactorily yielded power. At the present time 30 per cent of ash appears to be a practical limit under the most favorable conditions, though in most markets 15 per cent is prohibitive. It may some day be possible to utilize bony coals containing as much as 50 per cent of ash.

The minimum thickness and the maximum depth of coal beds that can be profitably mined are discussed by Mr. Fisher in his paper in this bulletin. A somewhat careful study has been made of the conditions under which thin coals and deep coals are being mined in this country and in Europe. As a result of this study all lands containing "coal" are classed as coal lands except as defined in the "Regulations regarding the classification and valuation of coal lands" under the heading "Classification of coal lands," approved by the Secretary of the Interior April 10, 1909. The "Classification of coal lands," sections 1 to 5, inclusive, of the Regulations is as follows:

"(1) For the purposes of classification and valuation, coal deposits shall be divided into four classes:

"(A) Anthracite, semianthracite, coking, and blacksmithing coals.

"(B) High-grade bituminous noncoking coals having a fuel value of not less than 12,000 B. t. u. on an unweathered, air-dried sample.

"(C) Bituminous coals having a fuel value of less than 12,000 B. t. u. on an unweathered, air-dried sample, and high-grade subbituminous coals having a fuel value of more than 9,500 B. t. u. on an unweathered air-dried sample.

"(D) Low-grade subbituminous coals having a fuel value below 9,500 B. t. u. on an unweathered, air-dried sample, and all lignite coals.

"(2) Lands underlain by coal beds, none of which contain 14 inches or over of coal, exclusive of partings, of class A, B, or C, or over 36 inches of class D, shall be classified as noncoal land.

"(3) Lands containing coals of classes A and B of any thickness at depths greater than 3,000 feet shall be classified as noncoal lands, except where the rocks are practically horizontal and the coal lies within 2 miles of the outcrop or point at which it can be reached by a 3,000-foot shaft.

"(4) Lands containing coals of class C of any thickness at a depth greater than 2,000 feet shall be classed as noncoal land, except where the rocks are practically horizontal and the coal lies within 2 miles of the outcrop or point at which it can be reached by a 2,000-foot shaft.

"(5) Lands containing coals of class D of any thickness at a depth greater than 500 feet shall be classed as noncoal, except where the rocks are practically horizontal and the coal lies within 1 mile of the outcrop or point at which it can be reached by 500-foot shaft."

VALUES GRADED ACCORDING TO QUALITY AND USE.

Other things being equal, high-grade coals, or coals that are especially suited to a particular use, will command a higher price than coals of lower grade. In the public-land States of the West the abundance of coal increases as its grade decreases. Anthracite is limited to a few localities of a few square miles each; high-grade bituminous coals are much more extensive, but as compared with the lower-grade coals are confined to relatively small areas; low-grade bituminous and subbituminous coals cover or underlie thousands of square miles in the West, and lignites are found in even larger areas.

The higher-grade coals are therefore separated from those of lower grade by greater demand and smaller supply and, other things being equal, lands containing coal of the higher grade will command higher prices. The Government has therefore divided the coals found in the West into four classes, for the purpose of valuation, as expressed in the first section of the "Regulations regarding the classification and valuation of coal lands," given above.

Although the coals have been divided into four classes, these classes grade into one another; they are not separated by sharp lines; correspondingly the values placed on the coal of the different classes are graded from one class to another, and within each class values are graded by one-tenth of a cent a ton.

In determining the values to be given to each class of coal certain facts and factors were considered.

(1) It has been deemed necessary to place such a price on coal land as to make it unprofitable for private citizens to take up government coal land simply to hold it for future mining, but at the same time the price should be so low for the man prepared to undertake immediate mining that it should not exceed the estimated royalty value of the coal, account being taken of the cost of carrying the investment at compound interest, with payment of taxes, etc.

(2) A royalty value of 10 cents a ton was taken as a fair average of the commercial royalties paid in the public-land States to-day for high-grade noncoking bituminous coals at the time of mining.

(3) As under the present laws the maximum units of entry are 160, 320, and 640 acres, it was assumed that twenty years would be ample time to mine out all of one bed under that area if mining were undertaken within a short time after purchasing and continued with reasonable diligence. This gives ten years as the average time that each acre of land will be held from the time of the purchase to the time when the purchaser realizes on his investment.

(4) By taking 7 per cent compounded annually as a liberal interest charge, the purchase price should not be more than such sum as, when put at compound interest at 7 per cent for ten years, with ample allowance for taxes, would approximate the royalty price at the time of mining.

(5) To make ample allowance for all the contingencies of mining, the purchase price should again be cut in half.

On this basis a purchase price of one-fifth the royalty value was fixed, the royalty value being assumed to be made up as follows:

Purchase price.....	\$1. 00
Interest on \$1 at 7 per cent, for ten years, compounded annually..	. 97
Allowance for taxes and contingencies.....	. 53
Cost at average time of mining.....	2. 50
Allowance for contingencies of mining.....	2. 50
Estimated royalty value.....	5. 00

On the high-grade bituminous coals, therefore, a value of 2 cents a ton was placed, equal to one-fifth of a 10-cent royalty. This value became a base figure on which the other classes above and below high-grade bituminous were valued. Anthracite, semianthracite, and coking bituminous coals are by common consent placed above the high-grade noncoking bituminous coals. They sell for more on the market, and, as shown by conditions in the East, lands containing such coals sell well above other coal lands. Therefore lands containing such coals were valued at 2 to 3 cents a ton of their estimated coal content.

After a careful study of hundreds of analyses of well-known coals the line between high-grade and low-grade bituminous, noncoking coals was drawn at 12,000 British thermal units. Coals above that calorific value in an unweathered, air-dried sample are classed as high-grade bituminous coal and valued at 1 cent to 2 cents a ton; those below that calorific value are classed as low-grade coal and valued at less than 1 cent and down to one-half cent a ton. Between one-half cent and 3 cents a ton, the minimum and maximum values, the valuations grade by one-tenth cent rises. A value of 1 cent given to a certain coal may indicate that it is considered either at the top of the low-class division (class C) or at the bottom of the high-class division (class B). Another coal of just a little poorer grade may be valued at nine-tenths of a cent a ton, and so on. Although the heat-giving value of a coal as expressed by British thermal units is taken as the most important factor in deciding on the value to be assigned to any coal, the physical properties and condition also receive due weight and consideration. All such factors as the shipping quality of the coal, its action on exposure to the atmosphere, the presence of partings or of sulphur or other impurities, the existence of any known conditions that will render mining easy or difficult or that will tend to add to or detract from its value on the market or to make its preparation for the market difficult are carefully considered.

With the low-grade bituminous coals are also placed the high-grade subbituminous coals or "black lignites," that show more than 9,500 British thermal units on an unweathered, air-dried sample. All coals whose heat value is below that limit, including also brown lignites, are grouped as class D, and are valued only at the legal minimum valuation, whatever their quality or thickness.

The grading of the value with the grade of the coal is theoretically in accord with modern practice, though actually and usually accessibility, nearness to market, and other local factors may so much outweigh differences in quality as to make it seem that quality has not been considered. Thus in Colorado the prices of land in the Boulder field, where the coal is subbituminous or "black lignite," appear to run as high as those for land in Routt County containing high-grade coals. If comparison is made between two fields equally accessible and equally near the same market and otherwise closely comparable, however, the difference is at once apparent. This may be seen by comparing the value of coal lands south of Pittsburg, where the Pittsburg coal is a low-sulphur coking coal, with the value of lands containing the same bed west of Pittsburg, where it is high in sulphur and a noncoking coal.

REDUCTION FOR NUMBER OF BEDS AND THICKNESS.

The value of 2 cents a ton for the highest grade of noncoking bituminous coal, it will be remembered, was based on the assumption that the coal purchased on the 40, 80, 160, 320, or 640 acres will all be mined out within twenty years. This makes no heavy burden on the purchaser if the land contains only 5 to 10 feet of coal. But where purchasers take 320 or 640 acres of land that contains from 20 to 30 feet or more of coal, to mine out 1,000 tons per acre-foot within twenty years requires an average yearly output that rapidly becomes a great burden, or else the time of the recovery of the coal will be prolonged and the interest charges will make the last of the coal cost more than the royalty charge from which the price was computed.

These great thicknesses may result where there are a number of beds or where there is but a single bed, many of the beds in the West running from 30 feet up to

80 feet. Where there is more than one coal bed the regulations, therefore, provide that the normal value shall be fixed only for the bed most likely to be worked first, and that for a second bed only 60 per cent of the normal value is to be taken, for the third best bed only 40 per cent of the normal value, and for the rest of the beds 30 per cent of the normal value. Where the excessive thickness is found in a single bed allowance is made for the longer time required for working it by treating it as a multiple bed—that is, as if it consisted of several beds that have locally come together. This is done only where the bed is over 15 feet thick. Where a bed is more than 15 feet thick the normal value is put only on 15 feet of it; the next 15 feet, or any part thereof, is valued at 60 per cent of the normal, the next 15 feet or part thereof at 40 per cent of the normal, and the rest of the bed, if it be so thick, at 30 per cent of the normal.

REDUCTION FOR DISTANCE FROM RAILROAD, DEPTH, ETC.

The value per ton above quoted is the normal or maximum value for any kind of coal. By the regulations the total price on any acre of land can not exceed \$300, "except in districts which contain large coal mines where the character and extent of the coal are well known to the purchaser." Deduction is made from this normal for excessive distance from railroads and some other factors.

Prior to 1906, as before stated, it was the practice to charge the minimum prices of \$20 and \$10 for coal lands, according to their distance from a railroad. If a railroad was built within 15 miles of any of the lower-priced lands, their minimum price was, by the law, automatically raised to the higher value. The same rule is applicable to the present system of valuation of coal lands according to their tonnage content, and lands more than 15 miles from a railroad are valued at one-half of the amount which would be fixed if they were within 15 miles of a completed railroad, the valuation price being automatically doubled when the lands are brought within the 15-mile limit.

In like manner, no allowance is made for existing or possible competition, distance from markets, or other factors that do not directly concern the coal itself. Those factors are variable and extraneous. The finding of a mineral lode may open up a new and unforeseen market, and the exhaustion of the lode, possibly years afterward, may destroy that market. Or the carrying out of an irrigation project may give a neighboring coal field a small but permanent market. Competition, in like manner, is largely a matter of trade and commerce, subject to all the fluctuations of business and affected by factors with which the coal in the ground has nothing whatever to do. The price fixed is based on an average royalty under average conditions as they exist to-day, not on the 25-cent to 75-cent royalties paid at mines exceptionally well located—near towns or near large markets—nor yet on the exceptionally low royalties of 2 to 5 cents a ton paid under excessive competition, as in Indiana and Illinois.

Were the Government to vary the price of its coal lands with every variation in external conditions, as prices of town lots are raised or lowered, an excessive burden would be added to the cost of carrying the coal and endless dissatisfaction with the prices fixed would be created by the difficulty of giving proper weight and value to all the external factors.

On the other hand, it is possible to make allowance for factors that directly affect the coal bed and the ground under which it lies, such as depth, partings in the coal, poor roof, soft floor, topographic inaccessibility, burned outcrop, irregularity of bed, uncertainty of extent of bed, faulting, presence of eruptives, dikes, and sills—in short, any and all the factors that may affect the "fixed charge" representing the cost of mining and preparing the coal.

Thus allowance is made for depth, where the depth is more than a few hundred feet, grading down to a minimum price just within the limit of depth. In faulting, allowance is made not only for the zone of faulting, but for the fact that for practical purposes the throw may be so much that the coal on one side of the fault must be considered and treated as a second bed. In general, it has been the policy of the department to be conservative and to give the purchaser the benefit of the doubt, though, as previously observed, this statement must not be interpreted to mean that local lack of knowledge should outweigh good general knowledge.

The regulations for valuing public coal lands are as follows:^a

"(6) The price of coal lands of classes A, B, and C shall be determined on the basis of estimated tonnage at the rate of one-half to 1 cent per estimated ton for class C, 1 to 2 cents per estimated ton for class B, and 2 to 3 cents per estimated ton for class A, when the lands are within 15 miles of a completed railroad, and half that much

^a See also sections 1 to 5 of these regulations, given on pages 37-38 of this bulletin.

when at a greater distance; but the price shall in no case exceed \$300 per acre, except in districts which contain large coal mines where the character and extent of the coal are well known to the purchaser. When, however, topographic conditions affect the accessibility of the coal the land within the 15-mile limit may be given a lower valuation, but in no case shall it be placed at less than the minimum, and a graded allowance may be made for increasing depth, with the same restriction.

"(7) The rates per ton in the preceding paragraph are based on the assumption that only one bed of coal is present. If more than one bed occurs in any tract of land in such relationship that the mining of one will not necessarily disturb the other, then for the second bed there shall be added to the price of the first bed 60 per cent of the value of the second bed according to the schedule, 40 per cent of the value of the third, and 30 per cent of the value of each additional bed; but the estimated price for coal shall in no case exceed \$300 per acre, except in districts which contain large coal mines where the character and extent of the coal deposits are well known to the purchaser. Where a bed is over 15 feet thick, the normal value shall be placed only on 15 feet; the next 15 feet or part thereof shall be valued at 60 per cent of the normal; the next 15 feet or part thereof at 40 per cent of the normal; and the rest of the bed at 30 per cent of the normal.

"(8) The tonnage shall be estimated for the purpose of valuation on the basis of 1,000 tons recovery per acre-foot.

"(9) The coal price of lands of class D shall be the minimum provided by law, \$20 per acre when within 15 miles of a railroad and \$10 per acre when at a greater distance.

"(10) In all valuations of coal lands any special conditions enhancing the value of the land for coal-mining purposes shall be taken into consideration.

"(11) When only a part of a smallest legal subdivision is underlain by coal the price per acre shall be fixed by dividing the total estimated coal values by the number of acres in the subdivision, but in no case shall this be less than the minimum provided by law.

"(12) When lands which were at time of classification more than 15 miles from a railroad are brought within the 15-mile limit by the beginning of operation of a new road, all values given in the original classification shall be doubled by the register and receiver.

"(13) Except in case of entries now pending or entries made prior to classification, review of classification or valuation may be had only upon application therefor to the Secretary, accompanied by a showing clearly and specifically setting forth conditions not existing or known at time of examination."

COMPARISON OF GOVERNMENT PRICES WITH COMMERCIAL PRICES.

The Geological Survey, working under the Secretary's rulings approved April 10, 1909, has not yet covered so large a territory as to afford numerous examples of valuations of coal for comparison. A large share of the sale values of which records were obtained in the public-land States are in areas mainly under private ownership, to which the Geological Survey has not yet given its attention. However, before the present regulations were approved large areas of coal land had already been valued by the Government's geologists, and while these values will generally be somewhat lower than the prices now being placed on corresponding coal land under the new regulations, comparisons may be instructive, especially comparisons with the minimum prices at which all government coal lands were sold a few years ago. Such a comparison is made in the following table, the valuations of coal land as made by the county assessors having been added, only values for developed property being given, according to the plan adopted in Pennsylvania, by which undeveloped lands are considered to be as valuable as developed lands if they are known to contain as much coal.

3376 INVESTIGATION INTERIOR DEPT. AND BUREAU OF FORESTRY.

Comparison of sale prices of some coal lands and the prices of the same lands as fixed by the Government.

General location.	Sale price per acre.	Government price per acre.	Assessor's appraisal.
Northern Wyoming.....	a \$105.50	b \$40.00	
Do.....	a 35.00	b 40.00	
Do.....	a 29.50	b 30.00	
Do.....	a 50.00	b 40.00	
Do.....	a 30.00	b 30.00	
Southern Wyoming.....	a 62.50	c 170.00	
Central Colorado.....	a 187.30	c 178.00	\$120.00
Do.....	d 500.00	100.00	120.00
Northern Colorado.....	a 187.30	c 103.00	200.00
Southern Colorado.....	a 187.30	c 135.00	200.00
Do.....	a 100.00	c 165.00	200.00
Do.....	d 60.00	c 80.00	180.00
Do.....	d 50.00	c 100.00	150.00
Do.....	d 25.00	c 150.00	150.00
Do.....	125.00	c 120.00	150.00
Utah.....	d 156.00	b 50.00	
Do.....	d 150.00	b 50.00	
Do.....	d 160.00	b 75.00	

a Undeveloped property, usually back from railroad.

b Classified before April 10, 1909.

c Classification based on regulations approved April 10, 1909.

d Developed property.

e Coal rights only.

It will be noted that nearly all the sale prices quoted are those of undeveloped lands, most of which are not on a railroad. As before stated, the sale price of nearly all developed lands includes the cost of improvements, of which the value is not known to the writer, leaving an uncertainty as to the price of the land per acre, so that many data of that kind could not be used in this and in other tables.

The data at hand are too meager to serve as a source of general conclusions. On the whole, the government prices do not appear to run uniformly either above or below the purchase prices at which coal lands have changed hands between private parties.

The list does not include any of the higher-priced government land, but it may be of interest to note that the higher prices placed on government lands do not seem to have decreased their sale, but rather the contrary. Thus, to take as a concrete illustration the land office in Salt Lake City, it is stated that when the new government prices were first announced there was a general expression of doubt as to the sale of the lands, and the prediction was freely made that the new prices would absolutely tie up their sale. It was not long, however, before coal lands began to sell at the new prices, and the actual acreage sold in a short time far exceeded previous sales within a similar period. The sales have increased rather than decreased. The writer visited the office in Salt Lake City October 1, 1909, and found that in the preceding month, September, 27 sales had been made, ranging from 40 to 160 acres, at an average price of over \$48 an acre, bringing into the office during the month a total of over \$200,000, that 50 coal declaratory statements had been made, and 5 cash entries. A study of the sale of the highest-priced lands reveals somewhat similar conditions. Thus in Wyoming coal declaratory statements have been made on four quarter sections in each of two townships, in one of which the prices range from \$37.0 to \$41.0 and in the other from \$225 to \$430 per acre. These facts in themselves would seem to be among the best arguments that the new valuations are not excessive or prohibitory. In fact, the statement was frequently heard in the field that in view of the way in which these values were determined persons contemplating buying placed a certain amount of reliance on them, regarding them as an index of the value and amount of coal the land contains.

LEASING OF PUBLIC COAL LANDS.

In his annual report for the year ended June 30, 1909, Mr. Ballinger, Secretary of the Interior, has recommended as follows:

"As regards new legislation, the present coal-land laws respecting the States and Territories, as well as Alaska, should be supplanted by an act fully meeting existing as well as future conditions. The inducements for much of the crime and fraud, both

constructive and actual, committed under the present system can be prevented by *separating the right to mine from the title to the soil*. The surface would thereby be open to entry under other laws according to its character and subject to the right to extract the coal. The object to be attained in any such legislation is to conserve the coal deposits as a public utility and to prevent monopoly or extortion in their disposition. This may be accomplished either through a leasing system, by which the title would remain in the Government, under proper regulation and supervision by the Secretary of the Interior, or through the sale of the deposits, and in either case with restrictions on their mining and use which would control the minimum output and conserve the deposits as a public utility. I believe the most advantageous method will be found in a measure authorizing the lease or sale of the *coal deposits in the lands*, subject to forfeiture for failure to exercise the rights granted, under such reasonable regulations as may be imposed. An exploration period of at least one year upon a permit basis, at a nominal charge, would insure to the applicant the necessary preliminary knowledge upon which to make the lease or purchase of the coal deposits and venture the necessary investment for operation. The maximum unit authorized for this use could safely be made from three to five sections, provided no greater surface rights be granted than will give proper facilities to reach and extract the coal deposits.

"In case of the failure of the lessees or grantees to open and operate the coal deposits under reasonable limitations and to maintain an output reasonably suited to the deposits, and in case of combinations as to price and limitations of output, title should be forfeited by proceedings in court for that purpose. Government mine supervision would doubtless be necessary to enforce the conditions and limitations under the grant."

As two of the public-land States have now in operation a leasing system for the coal under their own public lands, it may be of value and interest to examine the system in use in those States. Wyoming has had a leasing law since 1907, and Colorado for a much longer period.

In Colorado, on November 30, 1908, there were 18,275 acres under lease, and these leaseholds yielded \$104,456.42 in the biennial term ending November 30, 1908. In the three biennial periods from 1902 to 1908 the income from royalties nearly doubled in each successive period, being \$27,012.83 for 1902-1904, \$49,077.05 for 1904-1906, and \$104,456.42 for 1906-1908.

Some of the conditions of a lease in Colorado are as follows:

The lessee must begin to prospect within sixty days and to mine within six months if workable coal is found. He must open the coal and continuously and with reasonable energy develop it in a good and workmanlike manner, and after the first year he must pay a royalty on not less than a specified number of tons annually.

The lease gives him the right only to the coal and so much of the surface as is needed for the purpose of mining.

The lessee shall use good mining methods, timbering well, keeping the mine free from water and waste, protecting it against fire and flood, creeps and squeezes, and checking them if they occur, and shall extract the greatest amount of coal possible.

He is to allow the agents of the state board of land commissioners at any time to inspect any part of the mine or the mine's books.

The coal shall be weighed run-of-mine as it comes out of the mine and a record of it, as well as of all coal shipped by railroad or otherwise, shall be kept and preserved.

A report of the weight of all coal mined and shipped must be made on or before the 15th of each month.

On this basis payment must be made before the 15th of each month for all the coal mined during the preceding month, at the rate of 10 cents a short ton, less one-twelfth of the minimum annual royalty, which shall have already been paid at the beginning of the year, whether any coal has been mined or not. This minimum royalty is a fixed yearly charge payable at the beginning of the year, but if the total royalty for the year shall exceed the amount of the minimum royalty, the minimum royalty becomes a credit on the total royalty due.

All mining, timbering, and work done on the mine shall be subject to the supervision, approval, and order of the superintendent of the mineral department of the state board of land commissioners.

Failure on the part of the lessee to keep the terms of the lease will act to terminate the lease, and at the termination of the lease, either by forfeiture or expiration, the lessee shall return the property in good mining condition and without indemnification for improvements.

The lease may not be assigned or sublet without the consent and approval of the state board; it will not be construed as granting any other use than that of mining coal, nor for the mining, handling, or transportation of coal other than that mined on the land under the control of the state land board.

After testing several methods of measuring the coal for the purpose of computing the royalty, the state commission has adopted a method that is reported to be satisfactory both to the lessees and to the State. By this system the computation is made on the basis of the weight of the miners' cars. The monthly statements cover the gross weight mined by each miner, his check number, and the numbers of the entry and the room in which he mines. These statements are checked by the weights of lump and screenings and by railroad shipments. This makes an easy record to keep and to check. In case of dispute the coal in the mine is measured and the amount removed is computed. The cost of collection and inspection is stated to be about 5 per cent of the gross royalty income.

In Wyoming the lease grants the privilege of mining the coal for five years on the condition that the lessee shall pay to the State a fixed sum each year as "advance royalty," to apply on a royalty of 6 cents a ton on all coal mined and sold up to 25,000 tons, 5 cents if between 25,000 and 50,000 tons are mined and sold, 4 cents if between 50,000 and 100,000 tons, and 3 cents if more than 100,000 tons are mined each year; and that the lessee shall expend each year not less than \$200 in development work.

If the lessee shall open and equip a working mine on the lease he shall have a preferred right to renew the lease for further periods of five years each on terms which may differ from those first agreed on, but in which the advance royalty shall not exceed \$500 a year, to apply as before.

If coal is shipped from the leasehold by rail, a monthly statement and remittance must be made. For small mines a statement once a year only is required. No assignment of the lease shall be made without the consent of the State, and on the expiration or cancellation of the lease the property must be delivered in good condition.

The lease is subject to rights of way.

The lease may be cancelled for failure to make payments or otherwise keep its terms. A bond is required for the faithful performance of the terms of the lease.

DEPTH AND MINIMUM THICKNESS OF COAL BEDS AS LIMITING FACTORS IN VALUATION OF COAL LANDS.

[By C. A. FISHER.]

INTRODUCTION.

The subjects of maximum depth and minimum thickness of coal beds which can be worked at a profit have thus far received very little attention in this country, owing largely to the fact that only within the last few years has serious thought been given or organized effort made toward economy in the utilization of the country's coal resources. With the growth and development of the conservation policy two questions which are fundamental in an attempt to arrive at a reliable estimate of the coal supply naturally arise. (1) How far below the surface can coal be mined at a profit by the present methods or by the improved methods which may reasonably be expected in the future? (2) What is the minimum thickness at which a coal bed may be profitably worked, either as mined to-day or with the aid of mining machines especially devised to work in thin beds? The answers to these questions are quite as important as a knowledge of the areal extent of the coal fields in considering the total coal supply. The area of coal land is a fixed quantity which at present is fairly well known, but the maximum depth and minimum thickness of workable coal beds will be determined by the measure of success attained in overcoming the difficulties involved in mining deep beds and thin beds at a profit.

The mining of coal in this country, as elsewhere, has progressed along lines of least resistance. The thicker, more easily accessible, and more valuable beds have been worked first and the thinner, less easily accessible, and less valuable beds have been left. Unfortunately in some places this practice has rendered the thinner and less desirable beds worthless. Already in many places throughout the older mining districts of the Appalachian region, also in the eastern region of the interior province, the thicker and more valuable beds are being mined to their full extent, and attention is being turned toward the development of thinner and less valuable beds. In the western region of the interior province, where coal is generally less abundant, the mining of thin beds has been carried on rather extensively for some time and apparently at a profit. In the Rocky Mountain province, where coal mining is a comparatively new industry, a number of thin coals have been worked independently for one reason or another in the presence of thicker beds, and here and there mining has been extended to considerable depth.

It is proposed to discuss in this paper some special features of the coal-mining industry in this country and elsewhere. Coal mining in the United States has not reached so advanced a stage as it has in Europe and especially in England, and a comparison of methods will, it is believed, be instructive and helpful in the endeavor to make a wise disposition of the coal resources of this country.

MAXIMUM DEPTH OF COAL MINING.

FOREIGN COUNTRIES.

General conditions.—Coal mining at considerable depths has been carried on successfully abroad, especially on the European Continent, throughout the British Isles, and in Australia. Such mining is probably due to a number of conditions which vary with the locality where the deep workings occur; the most common, however, is the exhaustion of coals nearer the surface by long-continued working. In some places deep mining is done because the operators are more willing to lift coal from a deep shaft at the place where it is to be used, or from which it can be most economically shipped, than to bring coal mined at less depths elsewhere to this point by surface haulage. Still another cause may be the presence of steep dips in the rocks around the rim of a deep structural coal basin, so that a relatively small proportion of the coal of the basin lies near the surface and exploitation, even though followed but a short time, has reached considerable depth. Other factors, such as high surface relief in a coal field, may necessitate mining under great cover, which is generally the equivalent of great depth.

Belgium.—The deepest coal mining of which the writer has been able to obtain any record is in Belgium, where moderately thin coal beds are being successfully worked at a maximum depth of 3,937 feet. Several coal shafts in Belgium exceed 2,400 feet in depth, and mining levels ranging from 2,700+ to 3,000+ feet are not uncommon. The Produits collieries, in the vicinity of Mons, have reached the greatest depth given above, with results that are satisfactory so far as difficulties arising from excessive temperature, squeeze, and crushing strain due to the pressure of superincumbent strata are concerned. Under the commercial conditions existing in that country the cost of such mining is apparently not prohibitive. Definite figures are not at hand for comparison, but in general the cost of labor is less and the selling price of coal higher in Belgium than in this country. Some facts concerning a number of the deepest workings in Belgium are given in the table on page 65.

England and Wales.—In England and Wales, where coal mining has probably been carried on longer than in any other part of the world, the deepest coal workings about which it has been possible to obtain information are those of the Rams mine of the Pendleton colliery at Manchester, which attain a depth of 3,483 feet. The thickness of the coal bed varies from 2 to 6 feet. At the Ashton Moss and the New Moss collieries, both located in this district, workings have been carried to depths of 3,360 and 3,300 feet, respectively, and at other places in Lancashire, also in Yorkshire, Staffordshire, Somerset, and Glamorgan counties, coals are being mined at depths ranging from 2,130 to 3,150 feet. In these deep workings no insuperable engineering difficulties have been encountered; nor has the cost of mining at these great depths proved prohibitive. It is the consensus of opinion among men of wide experience in deep coal mining throughout the United Kingdom that nothing less than 4,000 feet should be regarded as the limit of practical coal mining.^a

Scotland.—The greatest depth of coal mining reported in Scotland is 2,700 feet, in a mine at the Niddrie collieries, Portobello, near Edinburgh. The coals there are in a structural basin, the lowest point of which, under the town of Musselburgh, lies at a depth of more than 4,000 feet.

France.—In France deep coal mining is not uncommon. E. Loze, in correspondence concerning the depth of collieries in France, makes the statement that coal-mine shafts extending to a depth of 1,200 to 1,500 feet were formerly considered deep, but that at present several exceed that depth and some reach 3,000 feet.

Germany.—According to information obtained by correspondence with the late Dr. H. Wedding, coal mining in Germany reaches a depth of 3,117 feet near Chemnitz. In the Rhenish-Westphalian mining board district of Dortmund coal beds are being exploited at a maximum depth of 2,625 feet. The depths in this district range from about 1,000 to 2,600 feet, the average being 1,700 feet. It is predicted by Schultz-Briesen,^b one of the foremost German authorities on the subject, that the average

^a Final Rept. Royal Comm. on Coal Supplies, pt. 1, p. 4.

^b First Rept. Royal Comm. on Coal Supplies, 1903, App. II, p. 335.

depth of coal mining in this particular field will exceed 2,000 feet in the next decade. In the northern part of the district along Lippe River the coal measures have been reached by drilling and found to contain good beds at depths ranging from 2,300 to 3,281 feet. It is believed by Schultz-Briesen that these coals will be exploited within the next few years. In regard to deep coal mining in Westphalia, the same author makes the following statement in a communication to the Royal Commission on Coal Supplies:

"The technical progress made in the last twenty-five years in the machinery applied and the improvements in the underground system of mining operations, go to prove that we have not by any means arrived at a fixed standpoint with regard to such progress, and thus the German miner has no doubt that not only is there a possibility but the greatest likelihood of pushing down to a depth of 1,500 meters (4,921 feet) or more, and of mining coal there at a commercially profitable cost."

It is noteworthy that this opinion is shared by Stassert and other coal experts on the Continent.

Australia.—A shaft known as the Birthday has been sunk to a depth approximating 3,000 feet by the Sydney Harbor colliery in New South Wales for the purpose of reaching a coal bed not exceeding 3 feet thick. This coal bed outcrops 75 miles away, at Newcastle, also on the coast, where shipping facilities are equally good. It is significant that another shaft was sunk to the same bed after the Birthday shaft had proved the thickness of the coal.

Experience gained by deep mining abroad.—Deep coal mining has advanced to such an extent in Belgium, England, France, and Germany that many of the obstacles which arise in working coal at depths of 2,000 to 4,000 feet have been actually experienced and therefore have ceased to be matters of conjecture. From the knowledge gained by these deep workings there appear to be no engineering or mechanical difficulties which can not be successfully overcome within the limit of 4,000 feet. Certain advantages accompany the disadvantages in deep coal mining. The increase of pressure due to depth has been found in some mines to assist in working the coal. The greater the depth the less is the danger of disturbing valuable buildings, railroads, and canals on the surface as a direct result of taking out the coal. This item is an important one in a thickly populated region. The almost total absence of water at the lower levels often eliminates the item of drainage.

Some of the disadvantages in deep coal working are the difficulty of maintaining roadways and timbering and the increased percentage of small coal obtained. The chief difficulties which practical experience has brought out, however, are high temperature and cost. The former can be overcome to a certain degree by mechanical means, but such means involve an additional cost which, in continuing deeper, eventually reaches a figure that exceeds the selling price of the coal. Experience in these regions of deep mining has shown that the rate of increase of temperature with depth is by no means uniform, but varies in different localities and under different geologic and structural conditions, so that it is impossible to predict what temperature may be encountered at any given depth. The reduction of temperature by strong currents of dry air has proved in a measure successful, but the amount of such reduction is not great. It has been found that the maximum temperature consistent with human labor is greater than 93° F., provided the air is dry.

The amount of lump coal which can be taken from a coal bed at great depths depends not only on the character of the coal, but also on the nature of the bed. If partings of dirt which take up the crush occur in the bed, the coal can often be taken out in moderate-sized blocks. The character of the strata inclosing the coal is also an extremely important factor in determining the effect of crushing stress at great depth. Of course, a poor roof or floor causes trouble in mining coal at any depth, but with increased depth the difficulty is greatly augmented. In fact, this point is emphasized by one English authority of wide experience in deep coal working, who states that the ability to reach great depths in mining depends very largely on the natural hardness and strength of the strata. Room-and-pillar methods of mining are universally abandoned in deep mining, and long-wall working, or some modification of that system, is employed. Mining machines are also strongly recommended for great depths.

UNITED STATES.

General conditions.—For the sake of convenience the coal fields of the United States have been classified by M. R. Campbell into six provinces—the eastern, interior, Gulf, northern Great Plains, Rocky Mountain, and Pacific coast provinces. These in turn have been subdivided into regions, fields, and districts. The eastern province includes the Appalachian Mountain region, the anthracite region of eastern Pennsylvania, and the Atlantic coast region, comprising a number of small scattered fields

in Virginia and North Carolina. The Gulf province comprises the coal and lignite bearing rocks of the Gulf States. It is subdivided into the Mississippi and Texas regions. The interior province comprises the large coal areas of the Mississippi drainage basin. Its subdivisions are the northern region, including the coal field of Michigan; the eastern region, including the Illinois, Indiana and Kentucky fields; the western region, including the Iowa, Missouri, Kansas, and Oklahoma fields; and the southwestern, or central Texas coal field. The northern Great Plains province includes the lignite and subbituminous coal fields of North and South Dakota, Wyoming, and Montana, and is subdivided into the Fort Union, Black Hills, Judith Basin, and Assiniboine regions. The Rocky Mountain province includes the coal regions of the Rocky Mountains, nine in all, besides a number of scattered areas. The Pacific coast province consists of a number of small isolated coal fields lying along the coast.

In the United States coal is now mined at relatively shallow depths. The deepest mining, which occurs in the anthracite region, reaches about 2,200 feet. The absence of deep mining in this country is due to the fact that in the Appalachian region, where coal mining began and the greatest development has taken place, the coal beds, with few exceptions, are near the surface, and the structure of the rocks is such that the coal beds do not extend to great depth. Likewise in the northern and eastern regions of the interior province, where mining has gone on for a long time, the structural basins are relatively shallow and the coal beds are near the surface. In the Rocky Mountain province, where the coal generally lies in deep structural basins, mining is not far advanced and for the most part is confined to the margins of the basins.

Eastern province.—The deepest coal mining in the eastern province—also the deepest in the United States, so far as the writer has been able to learn—is in the anthracite region, where, as previously stated, a maximum depth of about 2,200 feet has been reached. The coal beds of this region probably extend to greater depths, and as they furnish the best fuel in this country they will doubtless be worked at greater depths in the future. The deepest workings in the bituminous fields of western Pennsylvania probably do not exceed 1,000 feet. In Ohio and in West Virginia, which includes the New River and Pocahontas fields, the present depth or cover of coal mining is still less. The same maximum is found in eastern Kentucky, Tennessee, and Alabama, except possibly at a few places. In fact, throughout the Appalachian region, with the exception of the south end, or that part in northeastern Alabama, where there are some deep basins, the maximum cover of the unworked coal beds probably does not exceed 2,000 feet. It is worthy of note that in the Appalachian region, where the physical conditions, such as hardness of rock and ability to withstand crushing, are favorable for deep mining, the coal beds do not occur at great depths.

Interior province.—Throughout the interior province the workable coals, with the exception of the beds in the southern part of the western region, do not extend to great depth, but generally lie in shallow basins.

In the Michigan coal field the beds are nearly flat and the cover does not exceed 200 feet in thickness. The coal beds of the eastern region occur in a wide, shallow basin covering the greater part of Illinois and small portions of Indiana and Kentucky. The greatest depth of coal mining reported in this basin is 1,003 feet, near Assumption, Ill. Throughout Iowa, Missouri, and Kansas moderately shallow coal mining prevails, the range being from beds that outcrop to those about 300 feet deep. But farther west and south in this region, in eastern Kansas, Oklahoma, and western Arkansas, greater depths have been attained, the maximum reported being about 800 feet in the McAlester district of Oklahoma. It should be mentioned in this connection that a 1,170-foot shaft was sunk in the vicinity of Atchison, Kans., but no extensive operations were ever carried on from this level. The deepest coal-mining shaft reported in Arkansas is one of 480 feet. Very little information has been obtained concerning mining conditions in the southwestern region of Texas but such as is at hand indicates that the workings are not deep.

Northern Great Plains province.—The deepest coal mining in the Northern Great Plains province is in the Great Falls field of the Judith Basin region, where a shaft has been sunk to a depth of 480 feet for coal in the lower part of the Kootenai formation. In the Fort Union region, which is by far the largest subdivision of this province, the deepest mines, located near Sheridan, do not exceed 300 to 400 feet in depth, and in the lignite areas to the northeast the average depth is considerably less. In the Black Hills region, where mining has been going on for many years, the maximum depth is about 350 to 400 feet. The Assiniboine region of northern Montana has very shallow mining, the greatest depth reported being 250 feet.

Rocky Mountain province.—In the Rocky Mountain province the deepest mine about which information has been procured is mine No. 1 of the Union Pacific Coal Company, at Rock Springs, Wyo., where a depth of 2,000 feet has been reached. At Cumberland, in the southwestern part of the State of Wyoming, in the Hams Fork region, a depth of

1,600 feet was reported about two years ago. This depth is probably exceeded at present. The next mine in point of depth is the Spring Gulch mine, near Carbondale, Colo., in the southeastern part of the Uinta region, where coals lying under the Grand Hogback and having a covering of approximately 1,500 feet are worked. At Cokedale, Mont., a bed of coal was formerly worked to a depth of 1,300 feet. The coal was a coking variety and was badly crushed.

In the Raton Mountain region of southern Colorado and northern New Mexico the Starkville mine, in the vicinity of Fishers Peak, is at present working under about 1,100 feet of cover, and this depth will rapidly increase as the coal directly under the summit of the peak is approached. A depth of about 1,000 feet has been attained in the South Canyon mine, south of Glenwood Springs, Colo., and in the Central mine at Canon City, Colo. The depth of coal mining in other parts of the Rocky Mountain province, except possibly at a few places, ranges from 50 to 600 feet.

Of the eight regions included within the Rocky Mountain province, five are large structural basins in which the coal beds outcrop more or less persistently around the margins, and if these beds are continuous underground they must reach great depths in the centers of the basins. The coals are late Cretaceous to Tertiary in age, and are contained for the most part in rocks which are prevailing soft, consisting of slightly consolidated sandstone and sandy shale. It is generally recognized that soft rocks are more susceptible to crushing and squeezing, due to the pressure of superincumbent strata, than hard metamorphosed sediments, and that, other things being equal, in mining under deep cover more difficulty will be encountered in maintaining roadways, etc., in soft rocks than in harder rocks, providing the latter are not faulted or too much jointed. It is obvious that as mining is extended to greater depths in the soft coal-bearing rocks of the West more or less difficulty may be expected from the above-mentioned sources. The long-wall method of mining, which is better suited to great depth than the room-and-pillar method, will probably have to be employed at depths of 2,000 feet and possibly less in some localities. When the room-and-pillar method is used in deep workings, in addition to the general difficulties resulting from crushing and squeezing, there sometimes occurs an explosion or blowing to pieces of the pillars over a considerable area in the mine. This phenomenon, known to the English miners as "outburst," is believed by some of them to be due to the presence in the coal of gas, which, being under great pressure in the pillar, explodes. Some observers believe that these outbursts are most prevalent in coals subject to spontaneous combustion, and that usually they may not be expected at depths less than 1,500 feet. Boring holes in the coal, also in the roof and floor, for the purpose of allowing the gas to escape, has been suggested as one remedy, and changing from the room-and-pillar method of mining to the long-wall method as another. Outbursts of this nature have been reported from mines in Utah; also from mines in Canada, where they are locally known as "bumps."

As previously stated, the long-wall method or some modification of it is recommended by English miners for deep coal workings, and this method will doubtless be adopted in recovering the coals of the deep basins of the West. With the advantages gained by the experience in deep coal mining abroad there should be no insuperable difficulties, either physical or commercial, in mining the coal from the bottoms of these basins to a depth of at least 4,000 feet.

Pacific Coast province.—The greatest depths reported to which coal workings have been carried on the Pacific coast are found in Washington, where, at the Roslyn mine, a depth of 700 feet has been reached. In the Coos Bay field of Oregon and in central California the maximum cover of coal workings is about 500 and 300 feet, respectively.

CONCLUSION.

In the United States to-day coal lying more than 3,000 feet below the surface is being disregarded in connection with the disposition of coal lands on the public domain, whereas coals below 3,000 feet are being successfully and profitably mined in Belgium, England, Wales, France, and Australia, a group of countries which supply about half of the world's production. Furthermore, all coal beds down to a depth of 4,000 feet were included by the Royal Commission on Coal Supplies of England in their estimate of the total coal resources of that country as early as 1871, nearly forty years ago. This position is significant as representing the best thought of a country in which coal mining originated and which at the present time ranks second only to the United States in the production of coal.

Of course it should be recognized that as coal mining in different parts of the United States is extended to great depths there may be localities in which the difficulties arising from deep mining may combine in such a way as to make further operation impracticable; it is believed, however, that such localities will be highly excep-

tional and that in general the obstacles encountered in this country will be no greater than those which have been successfully overcome in other countries.

WORKING OF THIN COAL BEDS.

FOREIGN COUNTRIES.

General statements.—The mining of thin coal beds, either in conjunction with other beds or independently, has for a long time been carried on with profit abroad, especially in England and Belgium. Special methods have been devised for recovering these thin deposits, and men have been trained from boyhood to work beds of ordinary bituminous coal 12 inches thick, either independently or in conjunction with thicker and more valuable beds. Cannel coal has been mined in beds as thin as 8 inches. It has also been found profitable to work these thin beds not only in conjunction with thicker beds but in groups of eight or ten beds.

The conditions which make it possible to mine coals in thin beds profitably are (1) exceptionally good quality; (2) exhaustion of more valuable beds; (3) intimate association with thicker and more valuable beds of coal, fire clay, etc.; (4) low labor cost and high selling price of coal; (5) geographic isolation of thin coals, which prevents them from coming into competition with more valuable beds; (6) especially favorable conditions of accessibility, such as will permit mining by stripping the surface, etc. One or more of these conditions has probably been the controlling factor in each locality in bringing about the mining of thin beds abroad.

England and Wales.—The thinnest bed of coal concerning which record has been obtained that is mined in England at the present time has a thickness of 8 inches. It is cannel coal and is mined in conjunction with other beds. At three different localities in East Lancashire beds of coal 10 inches thick are worked independently, and at several places in this county, as well as in Yorkshire, Shropshire, Gloucester, Somerset, and Monmouthshire, beds 12, 16, and 18 inches thick have been and are being mined at a profit, either independently or with thicker beds. The Lower Foot bed, which has a thickness of 11 inches, is worked in conjunction with thicker beds. At the Brayedown colliery at Bath, in Somerset, a bed 12 inches thick is being mined in connection with six other beds having an average thickness of 17½ inches, and at Dowlais, in the South Wales coal field, 27 men employed on a 21-inch bed produce 12,690 tons annually, or 470 tons to the man.

Belgium.—In Belgium the Little French, Deux Haies, and Harlem beds, each of which has a thickness of less than 12 inches, are mined. The Grand Gaillet and Grand Cornaillette beds, which are each less than 14 inches thick, are worked on account of their excellent quality as gas coal; also the St. Amand bed, which yields a domestic and coking coal and has a thickness of only 13 inches. In view of the fact that all the coal beds in Belgium lie at considerable depths below the surface, the mining of these thin beds at a profit is even more remarkable.

Scotland.—The mining of thin coal beds in Scotland is also more or less common. In Lanark and Sterling counties beds ranging from 12 to 15 inches are worked to some extent. In east Scotland, however, at the Westrigg, Avonhead, and Brownside collieries, beds 15, 13, and 14 inches thick, respectively, are mined, and many beds less than 2 feet thick are worked on a comparatively extensive scale. The thin beds thus worked rarely exceed 600 feet in depth and are not highly inclined.

Other foreign countries.—Thin coal beds are mined also to a greater or less extent in Germany, France, and other foreign countries.

UNITED STATES.

General conditions.—The mining of thin coal beds in the United States is not so generally practiced as in foreign countries, nor is the minimum thickness worked as small as that abroad, yet many thin coals are worked in this country. In general, the factors that bring about the mining of thin coal abroad apply also to this country, but here not all of these factors dominate, owing to the fact that the mining of our coals has not reached so mature a stage. Here the exhaustion of the thicker and more valuable beds has only recently begun to be felt, even in the oldest mining district. Specialization in utilizing the coals of this country has not been sufficiently developed to afford in many localities such a market for particular coals that they can be mined at a profit, no matter how thin.

Eastern province.—In the eastern province perhaps the thinnest beds worked are to be found in the area of most valuable coal, the anthracite region. Here, according to information obtained orally, coals as thin as 18 inches are mined in conjunction with other beds. In the bituminous region of western Pennsylvania the thinnest beds worked are in the western part of the Clearfield district, where the Gassam mine

works a bed ranging from 48 down to 17 inches. In West Virginia the thinnest coal bed worked commercially is the Sewell. At Sewell the Longdale Coal and Iron Company formerly worked this bed down to a thickness ranging from 20 to 24 inches. It is not uncommon in the New River field, where the Sewell coal has been extensively mined, to find the bed worked with a thickness varying from 24 to 30 inches. The coal is of high grade, clean, usually without parting, and generally inclosed by an excellent roof and floor. In the Georges Creek field of Maryland, with the approaching exhaustion of the "big vein," development work has begun on the Lower Kittanning coal, which in places is about 2 feet thick. Throughout eastern Kentucky and Tennessee the Blue Gem bed is the thinnest worked, varying from 22 to 24 inches. This bed furnishes a domestic coal of exceptional quality. It has been reported from a reliable source that a large area which prospect holes have shown to be underlain by the Blue Gem bed with a thickness of only 22 inches has recently been leased. In other parts of the eastern province, so far as the writer has been able to ascertain, there is nothing exceptional about the thickness of the coal beds mined, but personal observation in all the larger northern Appalachian fields indicates that there is a marked tendency toward the mining of thinner beds along with the thicker as the latter become more and more nearly worked out.

Gulf province.—The coals of the Gulf province are mainly lignite, and their development up to the present time has not been extensive except in the southwestern or Texas region. The thinnest bituminous coal reported as worked in this region is 19 inches thick.

Interior province.—In the interior province, especially throughout the northern and eastern regions, only moderately thin coal beds are mined, but in the western region some of the thinnest coal beds mined in the United States are to be found. The minimum thickness of coal mined in Michigan, or the northern region of this province, is 24 to 26 inches, which can not be regarded in any way exceptional. Throughout the eastern region, in Illinois, Indiana, and Kentucky, 2 feet is about the minimum worked. In both of these regions this large minimum is probably due to the prevailing presence of thick coal beds, which up to the present time have not been regarded as even approaching exhaustion. As previously mentioned, a very different condition prevails in the western region, which includes Iowa, Missouri, Kansas, Oklahoma, and Arkansas. In all these States except the last two coal is not abundant nor does it occur in especially thick beds. The thin beds are as a rule easily accessible, occurring at moderate depths, and are located at some distance from thicker and better beds.

According to the Iowa state mine inspector's report for 1908, there were 20 mines in Taylor, Page, and Adams counties, in the southwestern part of the State, located on a coal bed 14 to 18 inches thick, with an average of about 16 inches.^a Of these, 3 were shipping and 17 local mines. Their combined annual output amounted to 45,666 tons. Of course, the mines described above are not large and many might properly be regarded merely as country banks. Nevertheless, they are supplying at present at least a portion of the coal consumed in that part of the State and competing successfully with larger mines on thicker and better beds. These coals do not have the advantage of being high grade; they are, in fact, low-grade bituminous coals.

According to the Missouri state mine inspector's report for 1902 and the nineteenth and twenty-first annual reports of the Missouri bureau of mines for 1905 and 1907, respectively, 32 mines were operated on coal beds having a thickness ranging from 12 to 20 inches. Among these the largest output was from the Diamond Coal Company's mines in Lafayette County, which in 1907 yielded 49,786 tons. Records of three other mines are given in the annual report of the bureau of mines for 1907—one in Clay County, where the Missouri City Coal Company works a 20-inch bed, with an annual production of 40,590 tons; another in Lafayette County, where the Farmer Coal Company works a 19-inch bed, with an annual production of 37,600 tons; and another in Lafayette County, where the Laning-Harris Coal and Gas Company works an 18-inch bed, with an annual production of 27,534 tons. According to the nineteenth annual report of the bureau of mines, for 1905, page 249, a mine on an 80-acre lease, with \$2,500 invested in equipment, was operated by Joe Bradley on a 12-inch bed. In Grundy County in 1907 the Trenton Mining Company worked a 19-inch bed by a shaft 240 feet deep and produced 11,040 tons. According to R. S. Thomas, inspector of mines, a 16-inch bed in the same county was worked by a shaft 225 feet deep

^a The most recent publication on the coals of Iowa (Hinds, Henry, Coal deposits of Iowa: Ann. Rept. Iowa Geol. Survey, 1908, pp. 381, 385) gives the average thickness of the Nodaway bed in these counties as varying from 16 to 20 inches, with an average of about 17 inches.

The production of the mine is not given. In 1907 the Kierstead Coal Company of Lafayette County mined an 18-inch bed by a shaft 90 feet deep, the production being 18,176 tons. In addition to the mines mentioned above, there are a number of small mines or country banks working beds 12 to 18 inches thick, that range in annual output from 100 to 1,000 tons. Though none of the mines described above can be regarded as large, the Diamond Coal Company's mine, with an annual production of nearly 50,000 tons, can not be considered a country bank.

In the Osage City region of Kansas coal beds as thin as 15 to 18 inches are worked by small mines. In the Weir-Pittsburg region, the largest coal-mining field in the State, the minimum thickness of coal worked ranges from 18 to 24 inches. At Arcadia coal 20 inches thick is mined by stripping, also by drifts and shafts; this coal, owing to its excellent quality, competes successfully with the Weir-Pittsburg coal.

In Oklahoma the mining of relatively thin coal beds in a small way for local use is reported from a number of localities. In the northeastern part of the State (the Muskogee region) the McAlester coal, which in its northern extension from the McAlester district becomes thinner, is mined by stripping. Here the bed has an average thickness of only 22 inches.

The Coalridge bed at Auburn, Ark., has been worked in local mines where its thickness is 18 inches and by stripping where it is as thin as 14 inches. So far as known, the minimum thickness worked commercially is 26 inches, at mines of the Enterprise Mining Company and Paris Coal Company at Paris, and the Ouita Coal Company at Mill Creek.

In the Southwestern region of Texas, which comprises a part of the Interior province, thin coal beds of Carboniferous age are mined. The thinnest of which any record has been obtained is 18½ inches thick and is worked from a shaft 112 feet deep. At other places in Wise and Parker counties coal 19 and 20 inches thick is reported to be worked. In a report of the geological survey of Texas the following statement is made concerning the production from thin coal beds: "The production of coal in the Carboniferous area of Texas exceeds that of any other field of the State, and this, too, notwithstanding the very thin character of the coal seams."

Northern Great Plains province.—In the Northern Great Plains province thin beds are not mined to any considerable extent, probably for two reasons—the province is one in which thick deposits of low-grade coal predominate, and coal mining has been carried on for only a few years, except in the Great Falls field, where the industry is older and the coal is in some respects of better grade. In Yellowstone Valley, near Miles City, a low-grade subbituminous coal 3 feet 6 inches thick is worked—an exceptionally small thickness for a coal of this class.

Rocky Mountain province.—In the Rocky Mountain province coal mining can not be regarded as in an advanced stage of development and the mining of thin beds is not to be expected. However, at a number of scattered localities remarkably thin coal beds are mined. Of course, there is some exceptional condition which accounts for the mining of every thin coal worked throughout the West; but the experience of old and highly developed mining regions indicates that such conditions will increase both in number and variety as time goes on.

In Montana the thinnest bed mined in a commercial way is probably the Eagle coal, 30 inches thick, at Bridger and Joliet, in the southern part of the State. The mine at Bridger, which is relatively large, was opened where the coal was thicker, and at a few places in the present workings the bed exceeds 30 inches in thickness. The coal obtained at Joliet, where the workings are on a smaller scale, is hauled 2½ miles in wagons. These two mines are located within 30 miles of the Red Lodge-Bear Creek coal field, the largest producing locality in Montana.

In Wyoming the mining of thin coals is rather exceptional, but a few cases may be noted. Near Saratoga, Carbon County, in the Larson mine, a bed of coal 16 inches thick is worked, and the product is hauled 12 miles in wagons to the town of Saratoga. This coal is mined in a region where thicker coals are near by. In the northern part of the Bighorn Basin coal 21 inches thick is mined locally for domestic use.

Near Newcastle, Garfield County, Colo., the Keystone mine operates in a commercial way under lease a bed of coal 20 to 24 inches thick. It is a high-grade bituminous coal, and the mine is located near the railroad. Thicker coal beds are found near by. In Gunnison County the Floresta mine works a bed of anthracite coal which has a minimum thickness of 18 inches, though in places it reaches a thickness of 42 inches. The Enterprise mine, in El Paso County, Colo., in a region of much thicker coals, works a bed of subbituminous coal ranging in thickness from 30 to 42 inches. The output of this mine in 1906 was 5,798 tons. At the Starkville mine, in the Trinidad coal field, a bed of coal having a minimum thickness of 18 inches is worked; the average thickness of this bed, however, is considerably greater.

Very little mining of thin beds is carried on in New Mexico, but one case may be mentioned to illustrate how local conditions may influence the mining of thin beds. At the Cowles Coal Company's mine, Cowles, a bed of coal from 7 to 15 inches thick is worked to supply fuel for the Pecos Copper Company's mine located near by. This is the only coal anywhere near the copper mine, and for that reason it is probably a cheaper fuel than that shipped from a distance.

FACTORS AFFECTING THE MINING OF THIN COAL BEDS.

In any consideration of the subject of mining thin coal beds in the United States, a number of questions arise which should be taken into account even in so brief a treatment as that of the present paper. These are (1) the geologic or stratigraphic association of thin coal beds with thicker beds or those of approximately the same thickness; (2) the general quality of the coal found in the thin bed and the habit of the bed itself, such as contained partings and soft material, either above or below the coal, which aids in mining; and (3) the effect of greater utilization of the heat value of the coal by the consumer.

In the first place, thin coal beds in this country, as elsewhere, are, as a rule, more or less intimately associated with thicker beds or occur in groups of beds of small dimension. It is rather exceptional to find an isolated thin coal bed at a great distance from other beds, and therefore the thin coal can generally be mined in conjunction with the thicker bed or with a group of beds of smaller thickness, as it is mined abroad. In quality the thinner coals are not necessarily inferior to the thicker ones, for a thin bed may represent simply a shorter period of coal deposition and not less favorable conditions. In fact, the Sewell and Blue Gem coal beds of West Virginia and Kentucky are the thinnest beds worked and at the same time among the best coals produced in those regions. The mining of a thin bed is thus mainly a matter of cost and is dependent on the price that can be got for the coal. One of the most important factors in bringing about the mining of thin coal beds and also of deep ones and at the same time preventing waste is the extraction of greater heat values from the coal used. A higher heat efficiency would permit consumers to pay an additional price for coal without increasing their fuel cost per unit of output. This in turn would make it possible for the producer to mine coals not only in thin beds but also at great depths. The additional cost would be met by the increased selling price. The practice of buying coal on a heat-producing basis, which is becoming more and more general, will indirectly stimulate the movement for obtaining greater heat value from coal in burning. If stronger emphasis is placed by the purchaser on the total heat contained in the fuel he uses, the producer can meet this demand only by grading his product or by interesting himself in bringing about the general use of improved appliances which will extract a greater efficiency from his coal, thereby creating a market for it. The selling of coal on a heat-producing basis will also lead to greater specialization in the use of fuel. One prominent English authority on this subject makes the following statement: "As time goes on much more of the inherent value of the coal will be taken from it and the method of the preparation of coal may have to be changed and improved to suit the different conditions under which coal may be used in the future." This is as true in the United States as in England.

STANDARDS ADOPTED FOR COAL LANDS OF THE PUBLIC DOMAIN.

In the classification of the coal lands remaining on the public domain the Director of the United States Geological Survey, with the approval of the Secretary of the Interior, has fixed 3,000 feet as the limit of depth of practical coal mining and 14 inches as the minimum thickness of a bed of coal which may be regarded as of workable dimension. The limit of depth chosen exceeds by only 800 feet the deepest coal beds which are actually being worked in this country and falls about 900 feet short of the depth at which coals are being successfully exploited in Belgium. It was clearly recognized in fixing this depth limit that 4,000 feet should be the limit consistent with present practice and experience in coal mining abroad. As the coals of the public lands, however, are in general of a medium grade and are located in the West, where their exploitation has only well begun, the time when coals on these lands lying between 3,000 and 4,000 feet below the surface would be worked is still remote. It was recognized that, under the present law, which does not permit the separation of surface and underground rights, the reservation of lands underlain by coals at these depths for mineral use only would prohibit the development of the surface features of such lands, which are of greater immediate value. The question became simply, For what use is the land most valuable? There was no doubt in the minds of those who fixed the depth limit of practical coal mining on the public domain at 3,000 feet that

if the problem were considered in its broader aspect—that is, with a view to the future, in an endeavor to make the wisest disposition of the country's coal—the depth limit might properly be placed even at 4,000 feet.

In attempting to establish the minimum workable thickness of a coal bed it was hardly necessary, although very instructive, to look abroad for examples of thin-bed mining, for in parts of the Interior coal province of this country very thin coals are now worked. A minimum thickness of 14 inches does not seem extreme in any sense, as coal beds of this thickness are actually being worked by small mines in more than one locality in the Interior province and beds 2 to 4 inches thicker are being worked in several places by shipping mines of moderate size. This position is strengthened by the facts that in England and on the Continent coals considerably less than 14 inches thick are now being worked independently, and that for the last forty years, or since 1871, when the report of the first royal commission on coal supplies was made, 12 inches has been regarded in England as the minimum thickness of a workable coal bed.

The United States probably has greater coal resources than any other country and, as compared with England, has consumed a relatively small proportion of those resources; but these facts do not justify the practice of disregarding coals as of no value which, by reason of their great depth or their occurrence in thin beds, are difficult to mine. Surely in the United States, which ranks first in the world's production, it would be possible to win coal under as great difficulties as in any other country.

Of course it is to be expected that the question of mining coals at great depth and in thin beds in a commercial way will be regarded by the practical coal-mining man of to-day as more or less speculative. This criticism may be justifiable in a measure if the subject is viewed only in the light afforded by present commercial practices; but if it is considered with the broader view which notes the marked changes in conditions that are already manifesting themselves—such as the progress in obtaining greater heat values from coals, the greater specialization of their uses, and the certain exhaustion of thicker, shallower, and more valuable beds—it is certainly reasonable to expect that deep and thin coals will some day be mined in this country in a commercial way, as they are at the present time in other countries, where the main difference in conditions is that coal exploitation has reached a more mature stage.

STATISTICS.

The following tables present in summarized form statistics on the maximum depth of coal mining and the minimum thickness of coal beds worked in the United States and in several foreign countries.

Statistics on depth of coal mining.

Locality.	Depth.	Quality of coal.	Reference.	Remarks.
<i>England and Wales.</i>				
Manchester:				
Pendleton colliery..	<i>Fed.</i> 3,483		{ Dig. Evi. Roy. Com. Coal Supplies, 1901- 1905, p. 74. Correspondence with A. S. E. Ackerman.	
Ashton Moss colliery— Shaft.....	2,790		{ Trans. Inst. Min. Eng., vol. 21, 1900- 1901, p. 67.	
Deepest work- ings.	3,360			
New Moss colliery, shaft.	2,820		Dig. Evi. Roy. Com. Coal Supplies, 1901- 1905, p. 74.	"At present the deepest shaft in the Kingdom."
New Moss colliery...	3,300		do.	
Bradford colliery...	2,550		Idem, p. 73.	Worked "a few years ago."
Yorkshire: Mine (name not given).	2,400		do.	
Mine (name not given).	2,130		do.	
Staffordshire: 5 pits (names not given).	2,400-2,550		Idem, p. 74.	
Florence colliery...	2,400-2,700		Idem, p. 75.	
Lancashire: Agcroft colliery. Trencher- bone mine.	2,940		Idem, p. 74.	

Statistics on depth of coal mining—Continued.

Locality.	Depth.	Quality of coal.	Reference.	Remarks.	
<i>England and Wales.—Continued.</i>					
Wigan:					
Alexandra pit—	<i>Feet.</i>				
Shaft.....	2,325		{ Dig. Evi. Roy. Com. Coal Supplies, 1901- 1905, p. 75. Trans. Inst. Min. Eng., vol. 21, 1900-1901, p. 67.		
Deepest work- ings.	2,700				
Rosebridge colliery.	2,445				
Dunkinfield:					
Astley pit—					
Shaft.....	2,700		do.....		
Deepest work- ings.	3,150		do.....		
Somerset: Kingswood colliery.	2,460		Dig. Evi. Roy. Com. Coal Supplies, 1901- 1905, p. 75.		
Glamorgan, South Wales:					
Dowlais, Cardiff col- liery.	2,220		Idem, p. 76.....		
Ocean collieries....	2,700		do.....		
<i>Scotland.</i>					
Portobello: Niddrie col- lieries.	2,700	Cannel coal.....	do.....		
<i>Australia.</i>					
New South Wales:					
Sydney Harbor col- liery, Birthday shaft.	2,937	Bituminous coal.	Ann. Rept. Dept. Mines, New South Wales, 1902, p. 105. Idem, 1905, p. 111; 1906, p. 122.	Brick-lined shaft. The coal for which the Birth- day shaft was sunk out- crops 75 miles away, at Newcastle, also on the coast and with equally good shipping facilities.	
<i>Belgium.</i>					
Mons:					
Produits colliery....	3,937		Trans. Inst. Min. Eng., vol. 21, 1900-1901, p. 67.		
Produits colliery, Sainte Henriette shaft.	3,773		Correspondence with E. Lozé, Pas-de- Calais, France.		
Borinage:					
Agrappe No. 3.....	2,789		do.....		
Agrappe No. 10....	3,281		do.....		
Mine No. 10 of Agrappe at Patu- rages—					
Holting shaft.....	3,330		do.....		
Upcast shaft.....	3,445		do.....		
Charleroi:					
Sacré Madame.....	2,641-3,461		do.....		
Mine No. 11 of Mar- cinelle collieries—					
Downcast shaft.	3,218		do.....		
Upcast shaft.....	3,563		do.....		
Montsur Marchi- enne of Marchi- nelle collieries—					
Downcast shaft.	3,471		do.....		
Upcast shaft....	3,734		do.....		
St. André shaft, Poirier colliery.	3,150		do.....		
Marchienne col- liery.	3,117		Trans. Inst. Min. Eng., vol. 21, 1900-1901, p. 67.		
Anderlues: Vierenoy shaft.	3,300		do.....		
Gilly: Viviers shaft....	3,750		do.....		
Average throughout Belgium.	1,444	Gas coal to an- thracite.	Correspondence with E. Lozé, Pas-de- Calais, France.		

Statistics on depth of coal mining—Continued.

Locality.	Depth.	Quality of coal.	Reference.	Remarks.
<i>France.</i>				
Nord: Dutemple pit of Anzin Co.	2,660	.....	Correspondence with E. Lozé, Pas-de-Calais, France.	Only depths over 800 meters (2,625 feet) here included. Article gives depths as low as 500 meters (1,640 feet).
Haute Saone: Arthur de Buyer mine of Ronchamps Association.	3,314	.....	do	
Eboulst mine	3,281	.....	do	
Loire: Plat-de-Gier	2,887	.....	do	
Gard: Salles-de-Gagnieres.	2,723	.....	do	
<i>Germany.</i>				
Near Chemnitz	2,952-3,117	.....	Correspondence with Dr. Hermann Wedding, Berlin, Germany.	
Rheinisch-Westphalia: Dortmund.	2,625	.....	Dig. Evi. Roy. Com. Coal Supplies, 1901-1905, pp. 76-77.	
<i>United States.</i>				
Pennsylvania: Nanticoke, Anchicness colliery.	2,200	Anthracite	Correspondence with coal experts.	The greatest depth of bituminous coal mining in western Pennsylvania probably does not exceed 1,000 feet.
Ohio: Athens, Canaanville colliery.	439	Bituminous	33d Ann. Rept. Insp. Mines, 1907, pp. 251-258.	The usual depth of coal mining in Ohio ranges from 40 to 250 feet.
West Virginia: Near Thurmond, Stewart Colliery Co.	a 630	do		
Kentucky: Jellico district.	1,000	do	Correspondence with state geologist.	This depth is on the Blue Gem seam, a high-grade bituminous coal.
Tennessee	800	do	Consultation with persons familiar with the local conditions.	This depth may be regarded as the maximum for this State.
Alabama	600	do		Maximum depth of coal mining in Alabama. Coal beds reach great depth in this State.
Michigan	250-300	do		All coal mining in this State is at shallow depth.
Indiana: Oswald, Princeton Coal Mining Co.	450	do	Rept. State Min. Insp. 1906, p. 676; in 21st Ann. Rept. Dept. Geol. and Nat. Res.	Coal mining in Indiana ranges in depth from about 50 to 300 feet.
Illinois: Assumption, Assumption Coal Co.	1,003	do	Coal Rept. of Illinois, 1907, p. 140.	The output of this mine for 1907 was 83,959 tons. Coal mining in the State is generally shallow, ranging from a few feet to 300 feet.
Iowa: Albia, Hocking Coal Co. No. 3.	315	do	Correspondence with state geologist.	Usual depth of coal mining in Iowa ranges from 100 to 250 feet.
Missouri: Platte County, Home Riverside Coal Co.	720	do	21st Ann. Rept. Bur. Mines and Mine Insp., 1907, p. 258.	Coal mining in Missouri is usually shallow, ranging from 50 to 180 feet.
Arkansas: Russellville, Southern Anthracite Coal Co.	480	Semianthracite	Bull. U. S. Geol. Survey No. 326, p. 105.	Average depth for State about 200 feet.
Kansas: Atchison	1,170	Bituminous	Correspondence with state geologist.	Usual depth of coal mining in State ranges from 40 to 125 feet.
Oklahoma: Lehigh—Western Coal and Mining Co., mine No. 8.	684	do	Rept. Indian Territory Mine Insp., 1907, p. 12.	The deepest mining in Oklahoma occurs in the McAlester and Coalgate regions, 600 to 900 feet.

a Shaft.

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Statistics on depth of coal mining—Continued.

Locality.	Depth.	Quality of coal.	Reference.	Remarks.
<i>United States.—Cont'd.</i>				
Oklahoma—Continued				
Lehigh—Cont'd.				
Missouri, Kansas and Texas Ry., coal department, mine No. 12.	865	Bituminous...	Rept. Indian Territory Mine Insp., 1907, p. 29.	
Montana: Cokedale.....	1,300	Bituminous coking.		This mine is now abandoned. Coal mining in the Red Lodge and Great Falls fields, two of the largest in the State, does not exceed 500 to 600 feet in depth.
Wyoming: Cumberland.....	1,600	High-grade bituminous.		
Rock Springs, Union Pacific Coal Co., mine No. 1.	2,000			
Colorado:				
Starkville.....	1,100	Bituminous...		
Carbondale, Spring Gulch mine.	1,500	Coking.....		
Glenwood Springs, South Canyon mine.	1,050	.....do.....		
Canyon City, Central mine.	1,087	Bituminous...	Rept. State Mine Insp.	
Washington: Roslyn mine.	700	.....do.....		
Oregon: Marshfield, Beaver Hill mine.	500	Subbituminous.		Deepest coal mine in State
California: Stone Canyon.	300	.....do.....		

Land on the United States public domain which was underlain by coal at depths of 2,800, 4,100, 5,000, and 5,900 feet has been acquired from the Government by western coal companies because of its coal value, at a cost of \$20 an acre.

A summary of opinions of several foreign authorities as to the maximum depth of practicable coal mining is given in the following table:

Opinions of foreign authorities on the possibilities of deep coal mining.

Country.	Depth. in feet.	Reference.	Remarks.
England and Wales....	4,000	Dig. Evi. Roy. Com. Coal Supplies, 1901-1906, p. 32.	Adopted as "the limit of practical depth in working" by the Royal Commission of 1871; again by the commission of 1901 and 1905.
Do.....	8,000	Trans. Inst. Min. Eng., vol. 21, 1900-1901, p. 67.	"It is probable that a depth of 8,000 feet will be attained."
Germany.....	3,608	Dig. Evi. Roy. Com. Coal Supplies, 1901-1906, pp. 76-77.	"The shafts which to-day are being worked at a depth of 700 to 800 meters [2,300 to 2,625 feet] will, at that period [twenty-five years], have reached the depth of 1,100 meters [3,608 feet]."
Do.....	4,921	Idem, p. 107.....	"The German miner has no doubt that not only is there a possibility, but the greatest likelihood, of pushing down to a depth of 1,500 meters [4,921 feet] or more, and of winning coal there at a comparatively profitable cost."
European Continent....	4,900	Correspondence with A. S. E. Ackerman, London.	"Experts on the Continent consider 4,900 feet about the limit of working."

Statistics on the mining of thin coal beds.

Locality.	Thick- ness in inches.	Depth in feet.	Quality of coal.	Reference.	Remarks.
<i>England and Wales.</i>					
East Lancashire.....	10	.....	Bituminous...	Roy. Com. Coal Sup- plies, vol. 1, p. 25.	These beds are worked independ- ently and not in connection with thicker beds.
Do.....	10	.....	do.....	do.....	
Do.....	10	.....	do.....	do.....	
Do.....	11	.....	do.....	do.....	
Do.....	12	.....	do.....	do.....	
Do.....	12	.....	do.....	do.....	
Do.....	16	.....	do.....	do.....	
Do.....	16	.....	do.....	do.....	
Do.....	17	.....	do.....	do.....	
Do.....	18	300	Bituminous coking.	Idem, p. 27....	Coal in this mine is hauled 1,200 feet underground.
Do.....	18	.....	Bituminous...	Idem, p. 25....	
Do.....	18	.....	do.....	do.....	
Do.....	18	.....	do.....	do.....	
Lancashire, Lower Foot bed.	11	.....	do.....	Idem, p. 9....	Bed worked near a larger mine of thicker coal.
Lancashire.....	8	900	Cannel.....	do.....	
Do.....	20-22	1,821	Bituminous...	Idem, p. 22....	
Shropshire, Westbury.....	14	300	do.....	Idem, p. 9....	
Northeast Lancashire, Lower Mountain Mine bed.	12-18	.....	do.....	Idem, p. 13....	Attempt made to mine this seam commercially, but expense pro- hibited.
Yorkshire, Low Moor Better bed.	14	1,200	Coking.....	Idem, p. 16....	Men must be trained from boyhood to work in these thin beds.
Somerset, Bath, Braysdown colliery.	12	.....	.....	Idem, p. 32....	This seam worked in connection with six other beds averag- ing 17½ inches thick.
Somersetshire.....	22-26	2,400	.....	Idem, p. 35....	
Gloucester, Forest of Dean...	16	1,000	.....	Idem, p. 37....	This bed, in connec- tion with four oth- ers, is being worked extensively.
South Wales coal field: Man- mothshire, Tillery seam.	16	.....	Domestic and gas.	Idem, p. 38....	Output 100 tons a day. Bed worked separately, but in connection with a large concern.
Dowls.....	21	400	.....	Roy. Com. Coal Sup- plies, vol. 1, p. 39.	Twenty-seven men employed pro- duced 12,000 tons a year, or 470 tons per man.
<i>Scotland.</i>					
Lanark and Stirling counties.	24-30	120-1,200	.....	Idem, p. 20....	By virtue of adjacent rock strata this is a highly remunera- tive bed.
Do.....	15-20	120-1,200	.....	Idem, p. 23....	Bed had been worked by hand, but not aggres- sively.
Do.....	15	120-1,200	.....	do.....	This bed was regard- ed as of problem- atic workability.
Do.....	12	120-1,200	.....	do.....	With exhaustion of thicker beds this might possibly be worked commer- cially.
East Scotland district: Coxrod coal, Westrigg colliery.	15	.....	.....	Idem, p. 26....	
Coxrod coal, Avonhead colliery.	13	.....	.....	do.....	
Upper Drumgray coal, Brownyside colliery.	14	.....	.....	do.....	
Lanarkshire and Stirling- shire, in Airdrie and Sla- mannon districts.	14-30	120-300	.....	Idem, p. 29....	

Statistics on the mining of thin coal beds—Continued.

Locality.	Thick- ness in inches.	Depth in feet.	Quality of coal.	Reference.	Remarks.
<i>Belgium.</i>					
Hainaut coal basin: Flenu, colliery of Pro- dulta, Little French seam.	11	.....	Rich gas.....	Roy. Com. Coal Su- plies, vol. 1, p. 41.	The seam is 15 inches thick and carries 11 inches of coal.
Quaregnon, colliery of Rieu du Cœur et de la Boule—					
Deux Hales bed.....	10.2	.....	.....	do.....	
Herlem bed.....	11	.....	.....	do.....	
Plate vein bed.....	12.6	.....	.....	do.....	
Sorclers bed.....	14	.....	.....	do.....	
Wasmes, colliery d'Hornu & Wasmes—					
Grand Gaillet bed....	13.4	.....	Lighting, gas..	Idem, p. 42..	These coals are of ex- cellent quality.
Grand Cornalliette bed.....	13	.....	do.....	do.....	
Georges bed.....	12.5	.....	do.....	do.....	
Dour, Grande Machine & Feu de Dour, Deux Hales bed.....	15.7	.....	Coking.....	do.....	
Houdeng-Aimeries, col- liery of Bois du Luc, St. Amand bed.....	13	.....	Domestic and coking.....	do.....	
<i>United States.</i>					
<i>Pennsylvania:</i>					
Fourth bituminous dis- trict—					
Shawmut mine No. 5, Lower Kittan- ning bed.....	26-34	.....	Bituminous...	Rept. State Min. Insp., 1907, p. 150.	Annual production, 76,765 tons.
Shawmut mine No. 6, Lower Kittan- ning bed.....	26-34	.....	do.....	do.....	Annual production 41,064 tons.
Northwestern Min- ing and Exchange Co., Dagus No. 1, Lower Kittanning bed.....	26-34	.....	do.....	do.....	Annual production 31,632 tons.
Western Clearfield dis- trict, Gassam mine.	17-48	.....	do.....	Correspond- ence with acting state geologist.	
<i>West Virginia:</i>					
Fayette County, Sewell, Longdale Coal and Iron Co., Sewell bed.....	20-24	500-600	High-grade bi- tuminous.	Correspond- ence with state geolo- gist.	Not worked at pres- ent.
McDowell County, Hel- ena Coal Co., Pocahon- tas thin bed.....	24-36	.....	Bituminous...	22d Ann.Rept. State Min. Insp. Coal Mines, 1904, p. 269. Idem, p. 276.	
Mingo County Nolan Coal Co., Kittanning bed.....	24-36	.....	.....	.....
Maryland: Morrisons, Frost- burg Coal Mining Co.	30	.....	Semibitumi- nous.	State Geol. Rept., vol. 5, p. 343.	
<i>Ohio:</i>					
Jackson County—					
Jackson, Superior Coal Co., Superior No. 12 bed.....	28	150	Bituminous...	33d Ann.Rept. Insp. Mines, 1907, p. 215.	This mine has recent- ly been abandoned.
Price Switch— See Kay Coal Co., See Kay mine.	30	(c)	do.....	Idem, p. 217..	
Tibbals Coal Co., Tibbal's mine No. 2.....	26	(c)	do.....	Idem, p. 219..	
W. A. Gosline & Co., Price mine.	26	(c)	do.....	Idem, p. 221..	
Byers, Woods & Brown Coal Co., Buckeye mine No. 2.....	28	(c)	do.....	Idem, p. 220..	

* These thicknesses are only for mines using mining machines.

b Shaft.

c Drift.

Statistics on the mining of thin coal beds—Continued.

Locality.	Thick- ness in inches.	Depth in feet.	Quality of coal.	Reference.	Remarks.
United States—Continued.					
Ohio—					
Jackson County—					
Jackson—					
Henry Holberg mine.	26	(a)	Bituminous ..	33d Ann. Rept. Insp. Mines, 1907, p. 221.	Mine now aban- doned.
Henry Holberg mine No. 4.	26	(a)	.....do.....	Idem, p. 228...	
Oak Hill, Oak Hill Fire Brick Co., Oak Hill F. B. Mine.	26	(a)	.....do.....	Idem, p. 222...	Mine in poor condi- tion.
Crescent Coal Co., Crescent mine.	28	(a)	.....do.....	Idem, p. 223...	
Coalton, Henry Pritchard mine.	28	(a)	.....do.....	.....do.....	
W. J. Rowe & Son, Rowe mine.	28	(a)	.....do.....	Idem, p. 224...	
Sun Coal Co., Sun mine.	28	(a)	.....do.....	Idem, p. 227...	
Vinton County, Inghams, Valley Coal Co., In- ghams mine.	28	(a)	.....do.....	Idem, p. 228...	
Mahoning County, McDonald Brothers, Five Point mine, 3-A seam.	28	b 74	.....do.....	Idem, p. 385...	
Kentucky:					
Jellio field—					
Blue Gem bed.....	24		High-grade bi- tuminous.	Rept. State Min. Insp., 1901-2, p. 292.	It has been reported from a reliable source that 10,000 acres which was known from pros- pect holes to be underlain by this bed with an aver- age thickness of 22 inches was leased for coal-mining purposes. Coal in demand for domes- tic use. Blue Gem seam, 20 inches thick, has been mined with profit.
Mine.....	22		.....do.....		
Tennessee: Campbell Coun- ty, Newcomb, Big Italian mine.	22		High-grade bi- tuminous.	17th Ann. Rept. Min. Dept., 1907, p. 39.	
Indiana:					
Clay County—					
Crawford Coal Co., Crawford No. 8 mine.	36	50	Block.....	Rept. State Min. Insp., 1906, p. 674, in 21st Ann. Rept. Dept. Geology and Nat. Res., 1906.	This is an average thickness of the coal actually being mined. The lower "block" averages a little under 3 feet and the upper "block" a little over. Wage scale for this field is based on thickness of bed. Cost be- comes prohibitive at about 28 inches.
Brazil—					
Indiana Block Coal Co., Low- er Vein No. 1 mine.	36	58	.....do.....	.....do.....	
Vandalla Coal Co., Vandalla No. 50 mine.	36	105	.....do.....	.....do.....	

a Drift.

b Shaft.

Statistics on the mining of thin coal beds—Continued.

Locality.	Thick- ness in inches.	Depth in feet.	Quality of coal.	Reference.	Remarks.
<i>United States—Continued.</i>					
Alabama: Dekalb County, Lehusage, Lookout Fuel Co.	22-24	.....	.....	Rept. Insp. Alabama Coal Mines, 1908, p. 14.	78 men employed.
Illinois:					
Knox County—					
Abingdon—					
James Tell mine.	22	(a)	Bituminous...	Coal Rept. of Illinois, 1905, p. 158.	Annual output 240 tons.
William Carson mine.	22	(a)	.....do.....	.....do.....	Annual output 370 tons.
James Cross mine	22	(a)	.....do.....	.....do.....	Annual output 80 tons.
Sam Nelson mine	24	(b)	.....do.....	Idem, 1907, p. 145.	Annual output 1,350 tons.
Pointer & Cross mine.	24	(a)	.....do.....	.....do.....	Annual output 1,000 tons.
William Courson mine.	24	(a)	.....do.....	.....do.....	Annual output 700 tons.
Warren County—					
Monmouth—					
Thos. A. Welch mine.	24	(a)	.....do.....	Idem, 1906, p. 175.	Annual output 1,300 tons.
George Menfield mine.	24	c 40	.....do.....	Idem, 1907, p. 160.	Annual output 2,400 tons.
Roseville, J. B. Russell mine.	22	c 32	.....do.....	Idem, 1906, p. 175.	Annual output 750 tons.
Prairie City, G. W. Franklin mine.	22	(a)	.....do.....	.....do.....	Annual output 367 tons.
Youngstown, Thomas Lee mine.	22	(b)	.....do.....	.....do.....	Annual output 300 tons.
Avon, William Ruhl mine.	20	(b)	.....do.....	.....do.....	Annual output 40 tons.
Shelby County—					
Shelbyville, John Anglin mine.	26	c 64	.....do.....	Idem, 1907, p. 156.	Annual output 2,000 tons.
Shelbyville.....	17	(c)	.....do.....	.....do.....	
Michigan:					
Saginaw County, Sagi- naw mine.	26	.....	.....do.....	Correspondence with Consolidated Coal Co.	
Do.....	24	.....	.....do.....	.....do.....	This is the minimum thickness of coal mined in a com- mercial way in Michigan.
Missouri:					
Jackson County, Brush Creek Coal Co. mine.	18	c 320	Bituminous...	Rept. State Min. Insp., 1902, p. 125.	This mine employs 60 men.
Barton County—					
Joseph Bradley mine	12	(b)	.....do.....	19th Ann. Rept. Bur. Mines, 1906, p. 249.	80 acres leased. Cap- ital invested in equipment, \$2,500.
W. M. Peck mine...	12	(b)	.....do.....	.....do.....	
Peck & Brunnett mine.	12	(b)	.....do.....	21st Ann. Rept. Bur. Mines, 1907, p. 132.	Annual output 104 tons. Local.
Carroll County, Howard Kingslow mine.	18	c 50	.....do.....	Idem, p. 164..	
Charlton County, John Davis mine.	17	(b)	.....do.....	.....do.....	Annual output, 160 tons.
Clay County, Missouri City Coal Co. mine.	20	c 106	.....do.....	.....do.....	Annual output, 6- 500 tons. Capital- ization of mine \$10,000.
Grundy County, Tren- ton Mining Co. mine.	19	c 240	.....do.....	Idem, p. 184..	Annual output 11- 040 tons. Capital- ization of mine \$30,000.
Howard County, R. S. Jackson mine.	18	(b)	.....do.....	.....do.....	Annual output, 22 tons.
a Drift.			b Slope.	c Shaft.	

Statistics on the mining of thin coal beds—Continued.

Locality.	Thick- ness in inches.	Depth in feet.	Quality of coal.	Reference.	Remarks.
<i>United States—Continued.</i>					
<i>Missouri—Continued.</i>					
<i>Lafayette County—</i>					
Diamond Coal Co. mine.	18	a 56	Bituminous ..	21st Ann. Rept. Bur. Mines, 1907, p. 214.	Annual output, 49,786 tons. Capitaliza- tion of mine, \$10,000.
Farmers' Coal Co. mine.	19	a 55	.....do.....	.....do.....	Annual output, 37,600 tons. Capitaliza- tion of mine, \$150,000.
Kierstead Coal Co. mine.	18	a 90	.....do.....	.....do.....	Annual output, 18,176 tons. Capitaliza- tion of mine, \$50,000.
Leaning-Harris C. & G. Co. mine.	18	(b)	.....do.....	.....do.....	Annual output, 27,534 tons. Capitaliza- tion of mine, \$127,600.
Labor Exchange, No. 305, mine.	18	a 93	.....do.....	.....do.....	Annual output, 11,649 tons. Capitaliza- tion of mine, \$10,000.
Thomas Perry mine..	16	(b)	.....do.....	.....do.....	Annual output, 385 tons.
W. Tyler mine.....	16	a 24	.....do.....	.....do.....	Annual output, 485 tons.
Fred Walters mine..	16	(b)	.....do.....	.....do.....	Annual output, 900 tons.
L. M. Manning mine.	14	(b)	.....do.....	19th Ann. Rept. Bur. Mines, 1905, p. 257.	Small mine.
Strother Brothers mine.	14	(c)	.....do.....	.....do.....	
J. A. Williamson mine.	16	(c)	.....do.....	Idem, p. 258...	Capitalization of mine, \$2,100.
N. F. Wilson mine...	14	(b)	.....do.....	.....do.....	
Livingston County, Geo. T. Walters mine.	15	a 51	.....do.....	21st Ann. Rept. Bur. Mines, 1907, p. 240.	Annual output, 260 tons.
<i>Nodaway County—</i>					
Claypool & England mine.	15	a 58	.....do.....	Idem, p. 258...	Annual output, 120 tons.
William Bird mine..	12	a 28	.....do.....	19th Ann. Rept. Bur. Mines, 1905, p. 260.	
L. E. Bridge mine....	16	a 27	.....do.....	.....do.....	
A. Collins mine.....	12	a 44	.....do.....	.....do.....	
Fred Pierson mine....	14	a 22	.....do.....	.....do.....	
Al Russell mine.....	12	a 35	Bituminous...	.....do.....	
<i>Ray County—</i>					
Samuel Ben ware mine.	16	(b)	.....do.....	21st Ann. Rept. Bur. Mines, 1907, p. 282.	Annual output, 168 tons.
G. C. & A. B. Brock- man mine.	16	a 30	.....do.....	.....do.....	Annual output, 176 tons. Capitaliza- tion, \$400.
James Love mine....	16	(b)	.....do.....	Idem, p. 283...	Annual output, 205 tons.
<i>Kansas:</i>					
Weir-Pittsburg region...	18-24				This is the minimum thickness reported by some of the mines in the Weir- Pittsburg region, which is the largest coal-mining field in Kansas.

a Shaft.

b Drift.

c Slope.

Statistics on the mining of thin coal beds—Continued.

Locality.	Thick- ness in inches.	Depth in feet.	Quality of coal.	Reference.	Remarks.
<i>United States—Continued.</i>					
<i>Kansas—Continued.</i>					
Leavenworth district....	24	a 720	.....	Univ. Geol. Survey Kan- sas, vol. 3, p. 155. Idem, p. 178.	This coal is mined by stripping and by drifts and shafts, and is of sufficient- ly high grade to compete success- fully with the Weir- Pittsburg coal.
Arcadia region, Arcadia, Kansas.	20				
Osage City region.....	15-18	a 30	.....	Idem, p. 191.	These are small mines, or country banks.
Do.....	20-22				
Oklahoma: Melvin.....	22	(b)	Bituminous...	Geol. Atlas U. S., folio 132, 1906, p. 6.	Local consumption only.
<i>Arkansas:</i>					
Ouachita County— Camden— Dempsey mine...	36	(c)	Lignite.....	21st Ann. Rpt. U. S. Geol. Sur- vey, pt. 2, 1900, p. 323. Idem, p. 324.	Coal removed by stripping the sur- face. Abandoned at present.
Bratt mine.....	36	a 40	do.....	Bull. U. S. Geol. Sur- vey No. 326, 1907, p. 129.	
Dyer mine (sec. 21, T. 10 N., R. 29 W.)	12		Semibitu- minous.		
Sebastian County— Auburn— Coalridge bed (sec. 20, T. 7 N., R. 29 W.).	18		Bituminous...	Idem, p. 130.	Local mine.
Paris bed (sec. 27, T. 7 N., R. 29 W.).	14		do.....	do.....	Coal removed by stripping the sur- face.
Franklin County— Charleston, Charle- ston bed (sec. 16, T. 7 N., R. 28 W.).	18		do.....	Idem, p. 131.	Formerly worked, but now aban- doned.
Ozark, Philpott mine (sec. 20, T. 10 N., R. 25 W.).	22		do.....	Idem, p. 137.	Local mine.
Logan County— Paris— Enterprise Min- ing Co. mine (sec. 1, T. 7 N., R. 26 W.).	26		Semibitu- minous.	do.....	Shipping mine.
Paris Coal Co. mine (sec. 10, T. 7 N., R. 26 W.).	26		do.....	do.....	Do.
Pope County Milcreek, Oulta Coal Co. mine (sec. 20, T. 8 N., R. 20 W.).	26		Semian thra- cite.	Idem, p. 148.	Shipping mine.
<i>Texas:</i>					
Webb County, San Thomas mine.	30		Subbitumi- nous.	Geol. Survey Texas, p. 189.	
Wise County— Wise County Coal Co.	20	a 55	Bituminous...	Tex. Univ. Min. Sur- vey, Bull. 3, p. 34.	
Bridgeport— Bridgeport Coal Co. mine No. 1.	19	a 56	Subbitumi- nous.	do.....	
Bridgeport Coal Co. mine No. 2.	19	a 112	do.....	Idem, p. 35.	
Parker County, Rock Creek, Texas Coal and Fuel Co. mine No. 1.	21	a 150	do.....	do.....	

a Shaft.

b Stripping.

c Slope.

Statistics on the mining of thin coal beds—Continued.

Locality.	Thick- ness in inches.	Depth in feet.	Quality of coal.	Reference.	Remarks.
United States—Continued.					
Iowa:					
Taylor County— Union Coal Co., Nod- away bed.	14-18	*70-187	Low-grade bituminous.	Rept. State Min. Insp., 1908, pp. 10, 42.	Three of these are shipping mines and three local. Combined output 1908, 13,861 tons.
Campbell Coal Co., Nodaway bed.	14-18	*70-187	do.	do.	
William Browning Co., Nodaway bed.	14-18	*70-187	do.	do.	
Campbell Coal Co. No. 2, Nodaway bed.	14-18	*70-187	do.	do.	
Easter Coal Co., Nodaway bed.	14-18	*70-187	do.	do.	
Luellen Coal Co., Nodaway bed.	14-18	*70-187	do.	do.	
Page County— Johnson & Co., Nod- away bed.	14-18	*70-230	do.	do.	Local mines. Com- bined output 14,045 tons.
Pierson & Marley, Nodaway bed.	14-18	*70-230	do.	do.	
J. Marshall, Noda- way bed.	14-18	*70-230	do.	Idem, pp. 10, 44.	
Coin Coal Co., Nod- away bed.	14-18	*70-230	do.	do.	
Adams County— Jones, Nodaway bed.	14-18	*70-230	do.	Idem, pp. 10, 46.	Local mines. Com- bined output 17,760 tons.
Ruth, Nodaway bed.	14-18	*70-230	do.	do.	
Wild, Nodaway bed.	14-18	*70-230	do.	do.	
Day, Nodaway bed.	14-18	*70-230	do.	do.	
Hathaway, Noda- way bed.	14-18	*70-230	do.	do.	
Smith & Tindall, Nodaway bed.	14-18	*70-230	do.	do.	
Smith & Dixon, Nodaway bed.	14-18	*70-230	do.	do.	
Demirjean, Noda- way bed.	14-18	*70-230	do.	do.	
Daugherty & Son, Nodaway bed.	14-18	*70-230	do.	do.	
Weil, Nodaway bed.	14-18	*70-230	do.	do.	
Montana:					
Carbon County— Joliet, Barrett Broth- ers, Bergin mine.	30		Subbitumi- nous.	Bull. U. S. Geol. Survey No. 341, 1909, p. 193.	Coal hauled in wag- ons about 2½ miles.
Bridger, Bridger Coal Improvement Co., Bridger mine.	30-68		do.	Idem, p. 189.	This mine was open- ed on thicker coals, and in certain parts of the present workings the thick- ness exceeds 30 inches. Commer- cial mine.
Custer County, Miles City, Brown's mine.	42		Low-grade subbitumi- nous.	Bull. U. S. Geol. Sur- vey No. 341, 1909, p. 50.	
Wyoming:					
Carbon County, Sara- toga, Larson mine.	16		Bituminous.	Bull. U. S. Geol. Sur- vey No. 316, 1907, p. 247.	This coal is hauled by wagon 12 miles to the town of Sara- toga. Thicker coals near by.
Bighorn County, Byron mine.	21		Subbitumi- nous.	Bull. U. S. Geol. Sur- vey No. 341, 1909, p. 180.	Mined locally for do- mestic use.

* Shaft.

Statistics on the mining of thin coal beds—Continued.

Locality.	Thick- ness in inches.	Depth in feet.	Quality of coal.	Reference.	Remarks.
United States—Continued.					
Colorado:					
Garfield County, New- castle, Dalrymple & Meese, Keystone mine (worked under lease).	20-24	a 500	High-grade bituminous.	Bull. U. S. Geol. Sur- vey No. 316, 1907, p. 290.	Commercial mine. Worked because coal is located on the railroad and is of a superior qual- ity. Production in 1908 was 6,348 tons. Thicker coals lo- cated near by.
El Paso County, Enter- prise mine.	30-42	(b)	Lignite.....	Rept. Coal Min. Insp., 1905-6, p. 17.	This coal is located near beds ranging from 5 to 17 feet in thickness. Produc- tion in 1906 was 5,798 tons.
Montezuma County, mine.	30	(c)	.....do.....	Idem, 1907, p. 60.	Production in 1907, 150 tons; in 1908, 441 tons.
Gunnison County, Flo- resta mine.	18-42	(c)	Anthracite....	Idem, 1905-6, p. 22.	
Las Animas County, Starkville mine.	18-84	(c)	Bituminous...	Idem, p. 28...	Production, 315,906 tons.
La Plata County, Du- rango, Todd & Bolster, Todd mine.	28-30	.....	Subbitumi- nous.	Bull. U. S. Geol. Sur- vey No. 316, 1907, p. 389.	This is reported to be the thinnest coal bed mined in the San Juan coal ba- sin.
New Mexico:					
San Miguel County, Cowles, Cowles Coal Co., mine.	7-15	.....	.....do.....	.....	This coal is mined to supply fuel to the Pecos Copper Co.'s mine, which is lo- cated near by. There are no thicker beds of coal near this mine

a Slope.

b Shaft.

c Drift.

The CHAIRMAN. I will ask you—

Mr. SMITH. Mr. Chairman, may I now answer the question of Senator Fletcher that I deferred answering, with regard to sales. It is shown on pages 44 and 45 that the writer—that is, one of our geologists, a member of our coal board—visited Salt Lake, the land office at Salt Lake, last October, and found that in the preceding month of September 27 sales had been made, ranging from 40 to 160 acres, at an average price of over \$48 an acre. That would be \$28 above the minimum, bringing into the office during the month a total of over \$200,000. There had also been a declaratory statement, a coal declaratory statement, to the amount of 50, and 5 cash entries.

The CHAIRMAN. In one month?

Mr. SMITH. That was one month; the month of September.

The CHAIRMAN. For one land office?

Mr. SMITH. In one land office. Now, in Wyoming, the only information I have is that there have been coal declaratory statements on four quarter sections in each of two townships, in one of which the prices range from \$370 to \$410 and in the other from \$225 to \$430 per acre. That is the same class of land that I have indicated—the Rock Springs field. These lands have been—

The CHAIRMAN. May I ask one question, if you have no objection, Mr. Vertrees. Why could not this system, or something of this kind, be applied to Alaska?

Mr. SMITH. I think it could be, Mr. Chairman, and to good advantage.

The CHAIRMAN. Instead of having flat prices, as you have there, why not apply this general law that is existing now with rules and regulations you have? Why would not that be a good solution of the leasing situation?

Mr. SMITH. I think it would be a good solution. The minimum should be decreased so as to cover some of that low-grade coal—

The CHAIRMAN. The lignite?

Mr. SMITH. The lignite in the interior, which has no commercial value.

The CHAIRMAN. If you simply put a minimum, you could put it as high on 1 acre of coal as you saw fit under these rules and regulations?

Mr. SMITH. Yes, sir. I think this is an answer also to the question asked by Mr. Graham. I think it was the thought expressed by him, how we could dispose of the land without giving control to a corporation. These prices, I think, can be defended from the fact that they are low enough, as we believe, for actual operation; but you can not buy coal at this price and hold it.

The CHAIRMAN. Coal lands?

Mr. SMITH. Coal land at this price and hold it, for the reason that it will eat itself up in interest charges.

Mr. DENBY. I want to ask you a question, Mr. Smith—possibly you have answered it already, but I happened not to hear you—are these prices which you have estimated here for the fee of the land or only for the subsurface?

Mr. SMITH. After you pass the law providing for the separation of the surface and the mineral rights, I suppose they would simply be for the coal.

Mr. DENBY. But this for the fee?

Mr. SMITH. That is what the law provides.

Mr. DENBY. But you differentiate, then, according to the value?

Mr. SMITH. Yes, sir. If I may be allowed, Mr. Chairman, I would like to give as an instance—take the difference between the selling price and a royalty—a case that has come to my attention only last night. I found on my desk a clipping, with other clippings, and it came to me because it referred to the Geological Survey. This article has the attractive headline, "Big land grab up to Taft. Millions behind contract. President is asked to approve." It refers to the suggested sale of the vast coal deposits in the State of Oklahoma, estimated by the Geological Survey to be worth about \$160,000,000, and more than 4,000 acres of average land. This is now up to the President for his approval, according to this statement, which is from the Philadelphia Record.

Mr. VERTREES. Where does it purport to come from?

The CHAIRMAN. Do you know as a matter of fact whether it has been submitted for his approval?

Mr. SMITH. I do not know about the matter of that being up to him for approval, but it is a matter of public record; it is published in a Senate document. It is a report which the Geological Survey made to the Secretary of the Interior and is published as Senate Document No. 390 on coal lands in Oklahoma. It came as a message from the President, transmitting these reports.

The CHAIRMAN. Does it explain the difference there that you have made between royalty prices and selling prices?

Mr. SMITH. There is nothing said about royalty prices in this newspaper account. It says estimated to be worth about \$100,000,000 and it is fixed at about 4,000,000 acres, but I do not know anything about the 4,000,000 acres. The actual acreage is about 363,000 acres.

The CHAIRMAN. In Oklahoma?

Mr. SMITH. The coal land belonging to the Choctaw Nation. Those lands have been examined for several years past and the final report of this investigation was gone over by the land classification board of the Survey and a careful estimate made of the coal.

The CHAIRMAN. Those are Indian lands, not federal lands?

Mr. SMITH. Not federal lands.

Mr. GRAHAM. I do not understand you to ask that that newspaper clipping go into the record?

Mr. SMITH. No; just the reference I have read to that clipping.

The CHAIRMAN. Have you one of those for the record?

Mr. SMITH. And I might say to Mr. Sleman, your secretary, that the bulletin which you have asked to print is No. 424, and the plates are at the Government Printing Office.

The CHAIRMAN. Can you leave that one you have with us?

Mr. SMITH. Yes, sir; I can leave that one with you.

The CHAIRMAN. Leave it with the reporter there.

Mr. VERTREES. These plates—they are at the Government Printing Office.

Senator FLETCHER. If there is a reprint of that being furnished now we do not need to put it in our record.

The CHAIRMAN. We had better have a reprint made of it.

Mr. VERTREES. He says the plates can be used in it, Senator.

Mr. SMITH. Do you want it put into the record?

The CHAIRMAN. There is no need of that.

Mr. DENBY. We want it separate.

Mr. SMITH. I can see that the reprint is expedited so that the committee can have copies if I am unable to furnish them. They have been generally distributed among the Congressmen and the first edition is already exhausted.

The newspaper statement is that these Choctaw coal lands are estimated by the Geological Survey at \$160,000,000. There is a possibility that they will be sold, the inference is, at some low price and a land grab inflicted upon the American people. In this case it will be the American Indian people.

The CHAIRMAN. Let me ask you, are not those lands, some of them, leased now and operated under leases?

Mr. SMITH. Some of them are leased.

The CHAIRMAN. None of them have been sold?

Mr. SMITH. No; none of them have been sold.

The CHAIRMAN. They are simply leased?

Mr. SMITH. Yes; they are simply leased. The estimate of \$160,000,000 is the estimate of the total royalty that could be collected from the total tonnage of these lands if leases like those at present in force are continued at the rate of 8 cents per ton. There is approximately 2,000,000,000 tons, and at 8 cents that gives you \$160,000,000, but you would have to wait six hundred and sixty-six years to get

the last of the \$160,000,000. In other words, that is not the estimate of the Geological Survey as to the present value of those lands; that is what can be secured from them by waiting for six hundred and sixty-six years for the last dollar.

The CHAIRMAN. Well, time does not count in conservation.

Mr. SMITH. As a matter of fact, as shown in this report, which is a published document and was available for those who wrote these statements, if they wished to get the whole statement—as a matter of fact it is set forth in these reports, signed by myself under date of February 5, 1910, that the present value of these lands based upon this royalty, which, of course, represents the interest on what would be the present selling price, is about six and a half million dollars—not a hundred and sixty millions, but six and a half millions. The United States Government could afford to pay that because they can get money at 3 per cent. The State of Oklahoma, on the other hand, if they wish to buy these lands, paying perhaps 5 per cent interest, could only afford to pay \$4,000,000 for these lands.

The CHAIRMAN. Would it not be better to save them for the Indians?

Mr. SMITH. If they are saved for the Indians, in six hundred and sixty-six years at the present rate of royalty they would produce \$160,000,000.

The CHAIRMAN. Why would not that be the best policy?

Mr. SMITH. I do not know who advocates any other.

Mr. MADISON. Advocates any other policy than that of saving it for the Indians?

Mr. SMITH. Yes, sir.

Mr. MADISON. You say you do not know of anybody that advocates any other except the one suggested by our chairman?

Mr. SMITH. I think I know that Mr. Ballinger is opposed to the sale, but I could not state that authoritatively for him. I want to cite these cases as showing the difference between our classification prices and what anyone could afford to pay for these lands to hold. I stated the State of Oklahoma, with the ability to borrow at 5 per cent, could pay \$4,000,000. Now, classified under our rules and regulations—of course, they have not been classified that way, because they did not belong to the Government, but tentatively classified that way—the selling price would aggregate \$26,000,000. Now, no one could afford to buy that tract at \$26,000,000. Four million is what they could afford to pay for the whole tract. However, we believe our prices are about \$70 an acre, and that would only be a little over a cent a ton for the coal that would be under an acre; that a corporation or an individual could afford to buy a small tract—a thousand acres at \$70 an acre—at that price, but they could not afford to buy 363,000 acres, because there is not a market for that coal. The production down there is only about 3,000,000 tons, but it has been less during the last two years than it was during 1907, and I cited this case because I think it shows that our prices are not too high for development, but they are too high for speculation. That is just what we purposed in making up the schedule of prices. We purposed to prevent holding against future development. If these lands are to be held under the law we think the United States should hold them.

Mr. MADISON. What is it that it is proposed to pay for these Oklahoma lands?

Mr. SMITH. I do not understand that the newspaper item stated, but it intimated they were going to pay less than one hundred and sixty millions.

The CHAIRMAN. My impression—I may have been mistaken—but my impression is that there is no law under which they could be sold; there is simply a law at present for leasing them—those Choctaw lands.

Mr. SMITH. They are leased at 8 cents a ton. About 3,000,000 tons are mined under those leases, the revenue therefrom being \$240,000. Now I have cited that case because it was set forth in a public document, and is available.

Senator PURCELL. How does that coal that is leased for 8 cents a ton compare with the Alaska coal?

Mr. SMITH. Oh, it is not as good coal, I suppose.

Senator PURCELL. The Alaska coal is better?

Mr. SMITH. Yes, sir.

Mr. VERTREES. That is, you mean the best Alaska coal?

Mr. SMITH. Yes; the best Alaska coal. Some of it is just about the same. As I understand, it is coking coal. We figure it at about 2½ cents a ton as the basal value and we discount that for an increase in thickness.

The CHAIRMAN. I want to say to the committee, if you will allow me to interrupt you, that I have just been confirmed by Mr. Finney in my view in stating that there is no authority for selling those Choctaw lands; they can only be leased, so that this story about this matter being up to Taft is in the air. Go on.

Mr. VERTREES. Is Mr. Evans the author of that publication?

Mr. SMITH. Of this—

Mr. VERTREES. Yes.

Mr. SMITH. I do not know what correspondent I was quoting, but the point was he was not quoting us.

Mr. VERTREES. Now, as I have understood you, Mr. Smith, the classification under Mr. Garfield's administration depended upon the distance from the railroad and what other element?

Mr. SMITH. Why, the quality of the coal and the number of beds.

Mr. VERTREES. And the basis of valuation by Secretary Ballinger includes what other additional element?

Mr. SMITH. The thickness of the beds as expressed in tonnage.

Mr. VERTREES. In other words, a tonnage basis?

Mr. SMITH. Yes, sir.

Mr. VERTREES. As I understand you, these valuations are fixed with two views—one to get returns, but principally to prevent them being held by speculators indefinitely?

Mr. SMITH. We think it is an effective way of preventing the monopolization of the public coal lands.

Mr. VERTREES. And, on the other hand, a proper and immediate development of that which is acquired?

Mr. SMITH. Encouraging development by making that profitable, but discouraging monopolization by making it unprofitable.

Senator ROOT. You think, Mr. Smith, that it is a better way than leasing?

Mr. SMITH. Before you came in, Senator, I expressed myself as somewhat in doubt regarding the leasing proposition. There are some advantages in a leasing proposition in the matter of possible regulation and inspection of mining. There is a danger, on the other hand, that they might encroach upon the police power of the state. There are also some practical difficulties of administration as connected with the government bureaus—I think I know something about the limitations of administration, and I am convinced that I would rather put a fixed price on land—have something to do with putting a fixed price that was publicly announced and having it sold at that price than to have a continued administration of leases with innumerable loopholes whereby there can be collusion between an unscrupulous operator and a weak, underpaid, government employee. I have yet to see where I would be safeguarded against congressional investigation under these circumstances. The bureau would be no stronger in some respects than its weakest link. If I was called upon to administer such a law I would probably make a try, but I think I would take my character in my hands.

The CHAIRMAN. You need not be afraid of congressional investigation. You would be too old before the result was announced.

Senator ROOT. They might not last more than six hundred and sixty-six years.

Mr. VERTREES. Is there anything further that ought to be said in connection with this coal question, Mr. Smith, to aid us in reaching our conclusion?

Mr. SMITH. I do not think of it at this time. There is a good deal that can be said, but I think we published—

Mr. VERTREES. Before leaving it I will just then ask you as to the matter in connection with Mr. Ballinger personally. What has been his course officially with reference to the management and direction of these entries so far as you have observed and seen?

Mr. SMITH. Mr. Ballinger has given us all the support that we could ask in this matter of classifying and valuing the coal lands of the United States. He has seemed to take a particular interest, and he has not only approved the regulations that have been suggested, after discussing them thoroughly and making slight modifications, but he has in the case of taking off the maximum of \$300 in connection with adjacent actual operations—I think that was largely on his own initiative that that was done; but he has also introduced a special provision that any other natural conditions that affect the value of the coal lands, such as standing timber, should be taken into consideration in valuing it for coal-mining purposes.

Mr. VERTREES. You wish to be understood, then, as saying that his administration, so far as you have observed and seen, has not only been with an eye single to the public welfare, but intelligently so.

Mr. SMITH. And I might almost add to that, Mr. Vertrees, in assenting to those two propositions, that he has even been enthusiastic in his support. He has also helped us in another way, in the way of better coordinating the work which we are doing in these coal-land valuations with the work which the land office is doing.

Mr. VERTREES. Will you explain in what way that improvement has been made by him?

Mr. SMITH. There is some difficulty in getting our results taken at their full value as we thought, by the General Land Office, and in the

case of using these results, and having these results used by the special agents in investigating particular cases. A better coordination was started under Secretary Garfield the 2d of March, I believe, is the date of the circular, but that has been carried out and added to by Secretary Ballinger, so that we are doing the work better and doing more of it.

The CHAIRMAN. Let me ask you right there, has the Land Office, in disposing of these coal lands, adhered to your valuations?

Mr. SMITH. These photographs, or photographs like these, are made of the original. I furnish the General Land Office with photographic copies, a number of which go to the different divisions of the General Land Office, and one copy goes to the register and receiver of the local land office, so this is—

The CHAIRMAN. I mean do they adhere to your prices?

Mr. SMITH. Oh, yes; that is what the prices are put on there for.

The CHAIRMAN. That is, they do not make other or different prices?

Mr. SMITH. Oh, no.

The CHAIRMAN. They adopt your prices?

Mr. SMITH. Yes, sir; it is part of the administration. Those are the orders to sell sent out by the Commissioner of the General Land Office.

Mr. VERTREES. We will come now, Mr. Smith, to the question of water-power withdrawals. What was your connection with water-power withdrawals; when did it begin, and what have you to say with respect to them?

Mr. SMITH. My connection with the withdrawal of water-power sites began under Secretary Ballinger on April 23.

Mr. VERTREES. You mean 1909?

Mr. SMITH. Yes; 1909. The occasion of the incident of that conference in his room has been testified to by Mr. Davis, and my remembrance of that is that it is essentially correct except in one particular.

Mr. VERTREES. You mean essentially the same?

Mr. SMITH. Yes; the same.

Mr. VERTREES. Well, what is that particular?

Mr. SMITH. It was the particular, as I remember, of Mr. Davis being asked by the Secretary whether the Geological Survey could do this work, replied that they had the men, the money, and the data. That is only a slight change from his testimony, but that is the way that I remember it.

Mr. VERTREES. It does include data which he was inclined to omit in his testimony, does it not?

Mr. SMITH. I do not think he was inclined to omit the fact that we have mentioned—or what I regard as a fact—that we had the data, but he underestimated that in comparing that with the data available.

Mr. VERTREES. Have you any letter from him on that subject?

Mr. SMITH. I have a letter.

Mr. VERTREES. Or on any subject which shows his recognition of the condition at that time, that you did have the money, the men, and the data?

Mr. SMITH. I haven't a letter from Mr. Davis, but I have letter under date of March 5, 1909, in which Mr. Newell advises the Secretary of the Interior, that was Mr. Garfield, with respect to the work under the 320-acre homestead law which had just been passed and approved, I think, on February 19. This matter being taken up by the department, and this letter referred to him from Representative

Mondell, Mr. Newell advised that this should be taken up by the Geological Survey and he mentions the organic law under which the survey was organized in which Director of the Geological Survey is charged with the classification of public lands. Then he mentioned also the work which had been done under the law of March 20, 1888, in which the Director of the Survey was instructed to make an examination of that portion of the arid regions of the United States as to water storage. Then he referred also to our annual appropriation whereby funds are provided for determining the water supply of the United States; and also referred to our topographic work, and the geologic work, which furnished data bearing upon springs, wells, and various sources of water. He concludes his letter by his expression of belief "that the organization now existing is best equipped for work of this character" (that is hydrographic investigations), "and in this belief I am supported by the present hydrographer of the survey. On the other hand, I do not think that the Reclamation Service should be involved directly in this classification of cases, but should confine its attention to the construction and operation of works of reclamation."

On that basis Secretary Garfield turned the determination of the segregation of the nonirrigable lands of the West over to the Geological Survey, and asked the Reclamation Service to cooperate.

Mr. PEPPER. That will go in, will it not?

Mr. VERTREES. Yes, sir.

The CHAIRMAN. Yes, that is admitted in evidence.

(The letter is as follows:)

[Further correspondence March 12.]

MARCH 2, 1909.

The honorable the SECRETARY OF THE INTERIOR.

SIR: Returning herewith letter of February 25 from Hon. F. W. Mondell regarding 320-acre homestead, I have taken this matter up informally with the Geological Survey, and as a result respectfully recommend that the matter be referred to the Geological Survey for action.

According to the organic law contained in the act of Congress of March 3, 1879, the Director of the Geological Survey is charged with "the classification of the public lands," etc. By resolution of March 20, 1888, the Director is instructed "to make an examination of that portion of the arid regions of the United States * * *" as to water storage, etc. By act approved October 2, 1888, an appropriation was made "for the purpose of investigating the extent to which the arid region of the United States can be redeemed by irrigation," etc. And in annual appropriation bills funds are provided for determining the water supply of the United States.

The Geological Survey is also making topographic maps and obtaining geologic and other data bearing upon springs, wells, and various sources of water.

During my connection with that survey, from 1888 to 1906, as chief hydrographer and chief engineer, I tried to build up an organization and train men especially fitted for such investigations. I believe that the organization now existing is best equipped for work of this character, and in this belief I am supported by the present hydrographer of the survey.

On the other hand, I do not think that the Reclamation Service should be involved directly in this classification of lands, but should confine its attention to the construction and operation of works of reclamation.

Very respectfully,

GEORGE OTIS SMITH,
Director.

Mr. PEPPER. May I interrupt just now to ask this. You have referred to an order of Secretary Garfield in regard to this classification of the nonirrigable lands. Does that accompany your letter? It seems to me that it ought to go in.

Mr. SMITH. No. It was an indorsement. It does not show here, but it was simply referred to the Geological Survey and that was done in an interview in which I think Mr. Newell was also present. Mr. Garfield instructed me to take the matter up, and we have been acting on those informal instructions ever since in that matter. I cited that letter as indicating my belief that Mr. Newell and, I think, Mr. Davis regarded the survey as having the organization and appropriation, and by reason of that had accumulated data in the years that were past.

Mr. VERTREES. Now, on that date, April 23, when you had that conversation which you have referred to in the Secretary's office, or rather, heard one, did you have any conversation immediately following with Mr. Davis as to those blanket withdrawals, and if you say you did, state what he said. That is to say, did he recognize that they were blanket withdrawals of such a character that criticism was likely to follow?

Mr. SMITH. Mr. Davis and I left the Secretary's office together, as I remember, and as we were leaving the building Mr. Davis expressed himself as rather gratified that the matter had passed out of his jurisdiction, that he expected criticism of those withdrawals that had been made under Secretary Garfield on account of their blanket character, not on account of illegality, but on account of their blanket character.

Mr. VERTREES. Did he or not recommend to Secretary Ballinger that the survey, the Geological Survey, be charged, rather than the Reclamation Service, with these investigations?

Mr. SMITH. The letter which Secretary Ballinger had at the time of this interview was in fact directed to Mr. Newell as Director of the Reclamation Service, and, acting on the advice of Mr. Davis, the letter was redrafted by the Secretary's order and directed to myself as Director of the Geological Survey and without change except the last sentence, which was inserted, I believe, "The Reclamation Service will cooperate with you in order to secure the necessary data."

If the committee will allow me to make the statement, the special tag was attached to that letter and the matter has been special ever since.

The CHAIRMAN. How is that?

Mr. SMITH. The special tag was attached to that letter of April 23, and the matter of withdrawal of power sites under Secretary Ballinger has been special ever since.

Mr. VERTREES. What does that special tag mean?

Mr. SMITH. That means to expedite.

Mr. VERTREES. That is what it means, isn't it?

Mr. SMITH. That is what I was told to do.

Senator ROOT. That is April 23 a year ago?

Mr. SMITH. 1909, yes, sir.

Mr. GRAHAM. It is somewhat like a special-delivery stamp: it delays the proceedings?

Mr. SMITH. Yes, sir.

Mr. VERTREES. I think that should go in the record.

Mr. SMITH. I think it is in.

The CHAIRMAN. If it is not in the record, it will go in.

Mr. VERTREES. As I understand you, at that time you labored under the impression that that was entirely agreeable to Mr. Newell

and to Mr. Davis, or, rather, to the Reclamation Service, that this duty should be put upon the Geological Survey rather than them, and that they felt relieved. Is that correct?

Mr. SMITH. I had no idea that it was other than agreeable to the Reclamation Service. I had no idea that there was any friction between the two services, as testified to at some points in the hearings before this committee.

Mr. VERTREES. How long before you ascertained that there was feeling in the Reclamation Service against the Geological Survey on account of this matter?

Mr. SMITH. The first definite information that I had was at the time of my interview, or Mr. Pinchot's interview with me, of July 23. He then brought up that press bulletin on the subject that I had written, and then I later heard in November from Mr. Garfield that that bulletin was understood and considered by Mr. Davis as especially critical of the Reclamation Service. I investigated that matter and had a talk with Mr. Davis, and I found that that was his view; that he thought that we were deliberately and intentionally criticising the Reclamation Service in the matter. I assured him that that had been far from our intent; that I had in reality avoided any mention of the Reclamation Service except such as was complimentary, in my opinion, and I had only referred to the withdrawals made on our recommendation as being smaller in area than the blanket withdrawals that had previously been made. I do not know that I used that offensive word, "blanket," then. My press bulletin is in the record.

Mr. VERTREES. Is the bulletin which appears on page 2045 of the record the one to which you refer?

Mr. SMITH. That is the bulletin, and I wrote it myself, with the intent of simply stating what we were doing and why we were doing it.

There had been, I might say, a little comment—not unfriendly, I think—even in the departments to the fact that our withdrawals were so small as compared with the earlier withdrawals, which they were supposed to take the place of, and I was meeting that objection; but it tended in no wise to reflect upon the Reclamation Service or the previous administration.

Mr. VERTREES. Now, was there any statement in this bulletin or any other bulletin or any other document issued by the Geological Survey intending or meaning to create the impression that your withdrawals were made upon data collected then immediately for that purpose, or upon data already existing in the office; which was it?

Mr. SMITH. I have yet to find any place where at any time the Geological Survey is authority for the statement—I do not know that anyone else is authority for that statement—that the withdrawals made in May, 1909, were based upon anything other than data already collected previous to that time. They were based upon field investigations of earlier date. I tried to make that plain when I made the statement that "all the recommendations by the Geological Survey had been based upon official data already on file."

The CHAIRMAN. What page are you reading from?

Mr. SMITH. I am reading from the power-site withdrawal statement, on page 2045 of the record, which I issued May 31, and which was the first authoritative statement given to the press.

Mr. VERTREES. As I understand you, they were based upon data which had been collected by field examinations, by the topographers and hydrographers and others appointed to do the work?

Mr. SMITH. Yes, sir.

Mr. VERTREES. But they had previously been made and the data was then on file in the office?

Mr. SMITH. Yes, sir.

Mr. VERTREES. And you proceeded from that data to make up the necessary reports or gather the necessary information?

Mr. SMITH. Yes; and I also stated that in the statement that I gave to the press. And it was in that connection I referred to the Reclamation Service as being the custodian and originator of some of that data, the only mention of the Reclamation Service in there.

Mr. VERTREES. Do you know anything about the estimate in which Mr. Ballinger held Mr. Newell when he came to the office, and his desire to have him near him, to the end that he might aid him? I mean Mr. Davis, Chief Engineer Davis.

Mr. SMITH. That statement applies to Mr. Davis. Some time in March, 1909, the latter part of March, I think, the Secretary, when I was conferring with him on some other subject, told me that there was criticism of the administration of the Reclamation Service in the West. I got the impression that it was from the West. He stated: "There were details which I am not competent to pass upon involved in these criticisms. I want to meet those criticisms in a way that will show my friendliness for the reclamation work." And then he asked me what I would think of having the chief engineer, Mr. Davis, come into the department, take a desk in one of the rooms near the Secretary's office, where he would be available for consultation, conference, whenever any such little item was brought up, and he said: "I do not know of any better way in which I can show my attitude toward the Reclamation Service." And I agreed with him, and he asked me my opinion of Mr. Davis, and of course I expressed the highest regard for Mr. Davis as a man and confidence in him as engineer, so far as I am qualified to pass upon that subject. I understood that that proposition was then made to Mr. Davis.

Mr. VERTREES. And for the reasons stated?

Mr. SMITH. I suppose for the reasons that were frankly stated to me.

Mr. VERTREES. On that question of data, before we pass from that, on page 1859, where you find the testimony of Mr. Davis, this occurs:

Senator FLETCHER. In other words, the Reclamation Service was better equipped for paring down these withdrawals or restoring the lands and subsequently making withdrawals than the Geological Survey?

And then Mr. Davis answered:

Mr. DAVIS. With the exception of the matter of funds. It is a legal question how far the reclamation fund could be used for that purpose.

Previously he had said in answer to the question that is just above that:

Mr. DAVIS. No, sir. About the only advantage that the Geological Survey has in that regard is a few unpublished topographic maps, which could be used somewhat more conveniently by that bureau than by the Reclamation Service. On the other hand, the Reclamation Service has a large number of skilled engineers in various parts of the West who know a power site when they see it and can report on them to greater convenience and with greater efficiency than anyone in the Geological Survey, with the possible exception of one or two who could not be made available, at

least for very much of that work. The information in the possession of the Reclamation Service not in the possession of the Geological Survey is, in my judgment, far greater than that in the possession of the Geological Survey and not in the possession of the Reclamation Service.

Is that true or not true, Mr. Smith; and if not, why not?

Mr. SMITH. I can simply oppose my judgment against Mr. Davis's judgment. He expresses his judgment to the effect that the Reclamation Service possesses more data than the Geological Survey does not possess than the Geological Survey possesses that the Reclamation Service does not possess.

I would put it the other way. I can at least say that I think we have made better use of the data which we have than was made by the Reclamation Service, in recommending original withdrawals to Secretary Garfield.

Mr. VERTREES. In Mr. Ballinger's letter, which appears on page 1183, to Senator La Follette, the statement is made that the withdrawals made by Secretary Ballinger "are based upon information derived from actual accurate field examinations, and are confined to the actual tracts having a possible value for power sites." Is that correct?

Mr. SMITH. Those were the instructions, and the effort was made to follow those instructions.

Mr. VERTREES. You did have such data in your office?

Mr. SMITH. Yes, sir; and we used it to the full extent.

Mr. VERTREES. That is, I mean, field examinations previously made?

Mr. SMITH. Yes, sir.

Mr. VERTREES. Believed to be reliable?

Mr. SMITH. Yes, sir.

Mr. VERTREES. And your report to Secretary Ballinger was based on such data?

Mr. SMITH. We reported to him exactly what we did.

I might say in that connection that Mr. Davis also in his testimony refers to some hesitation and doubt on the part of Mr. Layton and myself, Mr. Layton being the chief hydrographer of the survey, as to whether we could accomplish what Secretary Ballinger wished us to—that is, recommend withdrawals to him speedily and correctly—and the intimation is made there that one or both of us made the statement that we could do little more than turn back copies of the same list that the Reclamation Service had earlier recommended.

Now, with regard to that, I can state that I did not make any such remark or statement at the time, and it was within a month, or just about a month, that I wrote the statement which has been discussed—the press bulletin on the subject. I do not know whether Mr. Layton made such a statement as that. At least, I know it does not agree with his informal memorandum which he submitted to me three days after the receipt of this letter of April 23. On the 26th he submitted a statement of what we were doing and what we would do, and then a month or so later he made a statement to me in connection with his annual report of what we were doing and were accomplishing, and that statement is contained in my annual report. I took it and put it in the annual report without change, and it appears on page 13 of my annual report issued this last year. A statement that was made by him probably in June.

The CHAIRMAN. Is it on that you hold in your hand?

Mr. SMITH. Yes; I have it on that leaf.

The CHAIRMAN. Hand it to the stenographer.

(The statement is as follows:)

The scope of the water-resources investigations has recently proved to be of national significance in two important respects. It is obvious that the proper administration of this act requires at the outset a knowledge of the available water supplies. Without such information the act is practically nonadministrable. The second national feature dependent on these investigations is the temporary withdrawal, under the authority of the President, pending legislative action, of water-power sites along the rivers of the public domain. The extent and value of any water power depend on the amount of water that the stream furnishes. To withdraw from entry power sites on the public domain intelligently would be impossible without definite information, and, were not available data at hand, the propositions for withdrawal would involve a gigantic piece of investigation that could not be finished for a long term of years. It is true that information is lacking regarding a large number of important sites on the public domain, but it is also true that by the aid of the information which the Survey had collected during past years it has been possible to withdraw a large number of power sites immediately, and many more can be withdrawn in the near future, by reason of the fact that partial information is now available and can soon be made practically complete. It is believed by many that the protection and proper administration of the great water-power sites of the public domain constitute one of the most important projects of the present administration. The people are becoming each day more dependent, for their industrial productivity as well as for their comfort and happiness, on the energy available for development and partly developed in our streams. The circumstances present in a clear fashion one convincing line of evidence as to the necessity for carrying this work forward to a purposeful finish.

Mr. VERTREES. Is it not true, Mr. Smith, that you also used as a part of the data for these withdrawals unpublished manuscripts or maps; and if you say so, to what extent?

Mr. SMITH. The first withdrawal that was recommended to the Secretary, on May 14, under his instructions of April 23, was recommended to the Secretary and approved, I believe, on May 4. It was on a stream that had not been taken up by the Reclamation Service, although I believe that it was based largely upon the Reclamation Service investigations. That was on the Duchesne River in Utah and some creeks in Utah. The second withdrawal, which was one in Colorado, was based upon published topographic maps of the Survey. The third withdrawal was one on the Owyhee River of Oregon, which has been referred to and was referred to in my letter to Secretary Ballinger, which was transmitted to the President and is in the record. That one was based in part upon a detail topographic map or Mitchell-Butte sheet, which, as I stated in a letter, the Reclamation Service doubtless had in their files, but failed to use. The withdrawals Nos. 4 and 139, especially No. 4, were based in part on an unpublished manuscript map prepared by the Survey, based upon actual field surveys made in 1906 by Mr. Veatch, who had general charge of this withdrawal work, it being a part of his field work of 1906. Nos. 5, 6, and 7 are all based in part upon published or unpublished topographic sheets of the Survey. No. 8 was a revision of one of the Reclamation Service withdrawals and was based upon other data than that used. The original withdrawal was evidently based upon a State of Idaho map. I mean a Land Office statement.

Mr. VERTREES. Let me interrupt you there to have you explain what you mean by a state map?

Mr. SMITH. It was a small-scale land-office map, with which I think most of the committee are familiar, and it was several years old, and the river was wrongly located on it, so that the withdrawal got away

from the river, as in some other cases. We used land-office township plats there, which are on a much different scale, and also used some Forest Service maps on which we corrected the changes in the location of the river. Then numbers 9 and 10 on the Missouri River, and there we used some of the topographic maps of the Survey. Number 12—I do not remember what number 11 was—number 12, and I cite simply that because it was based in part on an unpublished topographic map which had been made in connection with our coal-field work of the previous summer, a map that was not accessible to the public and would not be known of except to the man who made it and his immediate chief and the land classification board. It was data that would have been furnished to the Reclamation Service or to any other government bureau if it had been asked for. And that illustrates, I think, the general policy.

Mr. VERREES. In his letter of November 6, 1909, to the President, written by Mr. Garfield, and which letter appears on pages 1232 and 1233 of the record, Mr. Garfield, among other things, says this to the President, namely:

Exactly the same kind of information was used that was used for the original withdrawals, the chief difference being that all entered lands were eliminated by specific description rather than general exception. This difference in method of description accounts for the chief difference in total areas reported as withdrawn by Secretary Ballinger and by me. There is in fact no material difference when the proper deductions are made, and this was explained to Secretary Ballinger, but seemingly not considered in the report to you.

Is that true? And if it is not true, state what is the truth of that matter.

Mr. SMITH. Mr. Garfield's statement that exactly the same kind of information was used that was used for the original withdrawals is based upon information that he received from some other source than myself. I had sent him a copy of the press bulletin, in which I indicated the kind of material that was used. I had also accompanied that with a letter in which I pointed out some months before this wherein the Reclamation Service failed. I did not cite the Reclamation Service in the published statement, but in my personal letter, which is now of record, I called attention to the fact that the Reclamation Service had failed to use all the data at hand. I also made that statement which I have already repeated to you, that I regretted that the hydrographic and the topographic data of the Geological Survey were not placed at his disposal as Secretary of the Interior. They were not placed simply because they had not been asked for. Not only that, but I did not know that such withdrawals were being made.

The next part of that—"the chief difference being that all entered land was eliminated by specific descriptions rather than by general exception"—I think that is an error by Mr. Garfield. He means patented lands. Entered lands are all included in Secretary Ballinger's withdrawals, and are so specified or mentioned in all of our statements on the subject. They are specifically entered, and I told Secretary Garfield in my letter that there was some difference of opinion on the legality of that, but the fact remained that they were entered and not eliminated.

These nence would read better from his view point: "The chief difference being that all patented lands were eliminated by specific

description rather than general exception," which would be a true statement.

This difference in method accounts for the difference in total areas reported as withdrawn by Secretary Ballinger and by me.

That was not the statement which I made in my press bulletin, and made advisedly. I made it on the basis of facts as I then knew them, and as I now know them. The fact was that excluded patent land, but that was not the reason for the great reduction. We excluded the lands that were outside, lands that had nothing to do, could have nothing to do, so far as I knew, with the power development.

Mr. PEPPER. Mr. Vertrees, would you ask at this point just the sense in which the term "entered" is used by Mr. Smith, because we have in mind in coal cases a difference between location and entry, and we have been treating entry there as synonymous with the time when payment of the price is made and equitable title vests in the claimant.

Mr. VERTREES. Just state the sense in which you use the word "entered."

Mr. SMITH. This is based on the land office records, which I understand indicate that vacant land, as opposed to the patented land, and even located land, as I understand it, would not be indicated on the plat book, and so would be considered as vacant land. But the entered land is indicated and we include that with the vacant land, and the tables that have been submitted previously, as well as the tables which I wish to include, showing the status of the land at the present time, and these withdrawals at the present time make a distinction between the vacant land and the entered land by showing the total acreage and then giving the entered acreage. Those statements were available. So that I think Secretary Garfield was simply in error in saying "entered" when he meant "patented."

But in regard to the real point of difference in which he takes some other statements than mine, for the purpose of his statement to the President, is that the chief difference in total areas reported is simply a difference in description. And I find by going over the areas of withdrawals which have been made prior to June 1, when I made that statement, and which included all of the land that had been restored by Secretary Ballinger and then rewithdrawn by us, that the percentage of patented lands in the area not withdrawn ranges from 7 to 98 per cent; the percentage for the whole is 44 per cent, showing that my statement was not only technically correct, but there was considerable margin. Forty-four per cent of the lands thrown out were thrown out because they were already patented; 56 per cent were thrown out because they had nothing to do with power development. If we should accept the case of Swan River, Montana, with a percentage of 98 per cent, all the land that bordered on the river was patented, and we made no rewithdrawal. And so in the case of Flathead, Montana, where we get the next highest percentage of patented land, all unpatented land near the river was only 135 acres out of a total area of 67,200 acres originally withdrawn. I think the statement which I made then was correct that for the most part the difference between the withdrawals was throwing out lands that in no wise

were essential to or had any connection with power sites and power development.

The CHAIRMAN. The record will show the following responses to calls for the production of documents:

THE SECRETARY OF THE INTERIOR,
Washington, April 23, 1910.

SIR: Complying with your request of the 16th instant, for "all correspondence on the files of the Department of the Interior or the Secretary's private files, or the files of the Geological Survey, relative to the withdrawals of oil lands referred to in the statement of the Geological Survey found on p. 1546 of the printed record of these hearings," I submit herewith copies of the files of the department, as follows:

File 2-41 (part 1)—General Land Office—Oil lands—General.
File 2-41 (part 1)—General Land Office—Oil lands—Colorado.
File 2-41 (part 1)—General Land Office—Oil lands—California.
File 2-41 (part 2)—General Land Office—Oil lands—California.
File 2-41 (part 3)—General Land Office—Oil lands—California.
File 2-41 (part 1)—General Land Office—Oil lands—Oregon.
File 2-41—General Land Office—Oil lands—Utah.
File 2-41 (part 1)—General Land Office—Oil lands—Wyoming.
Also copies of certain correspondence furnished by the Geological Survey.

Very respectfully,

R. A. BALLINGER, *Secretary.*

HON. KNUTE NELSON,
*Chairman Joint Investigating Committee,
Senate Office Building, Washington, D. C.*

147179-34.]

DEPARTMENT OF JUSTICE,
OFFICE OF THE ATTORNEY-GENERAL,
Washington, D. C., April 23, 1910.

HON. KNUTE NELSON,
*Chairman Joint Committee of Congress to Investigate the
Interior Department and Forestry Bureau, United States Senate.*

MY DEAR SENATOR: In compliance with the request contained in your letter of April 21st, I beg to transmit herewith the papers on file in this department (File No. 147179—Nos. 1 to 32, inclusive) relating to a charge made against United States Marshal Love, of Alaska, with regard to the feeding of certain prisoners.

Very respectfully,

GEO. W. WICKERSHAM,
Attorney-General.

The CHAIRMAN. The committee will stand adjourned until next Thursday at 10 o'clock.

(Thereupon at 5.05 o'clock the committee adjourned until Thursday, April 28, 1910, at 10 o'clock a. m.)

